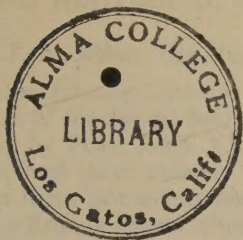


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CANON LAW ABSTRACTS

A Half-Yearly Review
of Periodical Literature
in Canon Law

BY MEMBERS OF THE
CANON LAW SOCIETY OF GREAT BRITAIN

EDITOR—

REV. J. BARRY
ST. ANDREW'S COLLEGE
DRYGRANGE, MELROSE, SCOTLAND

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GENERAL AND HISTORICAL SUBJECTS

J II/61, 170-203: J. A. Abbo: The Roman Synod. (Article.)

The volume, *Prima Romana Synodus* A. D. MDCCCCLX, contains the statutes of the Synod held in Rome in 1960, nine addresses delivered by Pope John XXIII on that occasion, other synodal acts, and three indices. This article by A. is neither a review of them nor a summary of the statutes; its aim is to discuss the Roman Synod, chiefly from the canonist's point of view, against the background of the current law on diocesan synods, with emphasis on synodal legislation in general and the legislation of the Roman Synod in particular. A. concludes his discussion by saying that : (1) the Roman Synod adhered closely to current norms governing diocesan synods; (2) the Synod seldom departed from current disciplinary laws on diocesan synods; (3) the extensive consultation of the bishop with his clergy and people made the preparatory phase of the Synod remarkable; (4) a study of the Synod proves abundantly rewarding; (5) through it all runs a current of deeply felt, intense pastoral anxiety for priests, religious and faithful alike; (6) in the acts of the Synod the figure of John XXIII shines forth as the father and the shepherd.

IER 6/61, 377: F. X. Murphy, C.SS.R.: The Roman Synod: II—The Promulgation. (Article.)

A brief glance at some of the more important matters dealt with in the acts of the First Roman Synod. (First half of article—The Preparation—in IER 3/60, 162).

REDC III/60, 623-632: S. Álvarez-Menéndez O.P.: Las Actas del Sinodo Romano de 1960.

ZSS 1960, 395-429: J. Sawicki: Geschichte und heutiger Stand der Vorarbeiten zur Gesamtausgabe der polnischen Synodalstatuten. (Article.)

S. gives an account of the nine volumes of diocesan synodal decrees in Poland published by himself between 1945 and 1957 under the general title of Jakub Sawicki: *Concilia Poloniae*.

J II/61, 141-169: B. F. Deutsch: Ecclesiastical law in the Novels of Leo the Philosopher. (Article.) Part I.

The *Novellae Constitutiones* of Leo VI, the Philosopher, have influenced the law of both the eastern and the western worlds, and hence they merit, as a collection, the interest and

study of every law student. As there is no reliable English translation of Leo's work, D's endeavour with its two chapters and appendix, is at least incidentally intended by him as a reliable source in English for the substance of the singular Novels.

CpR I-II/61, 77-118: F. Bogdan, S.A.C.: *Conspectus bibliographicus litteraturae canonisticae de iure religiosorum pro tempore Pontificatus Pii Papae XII.* (Article.)

Cf. cn 487, below.

CpR I-II/61, 5-38: A. Gutiérrez, C.M.F.: *De Organica Constitutione S.C. Episcoporum et Regularium necnon S.C. De Religiosis, 1587-1960.* (Article.)

An account of the development of the various Offices and Commissions in these Congregations with a detailed treatment of the present day organization of the Congregation of Religious.

IC I/61, 27-84: F. Javier de Ayala: *Silencio y Manifestación de Voluntad en Derecho Canonico.* (Article.)

A philosophical and historical study of "qui tacet consentire videtur." A. holds "aliud est tacere aliud consentire." Silence implies neither consent nor dissent. In certain cases positive law decrees that certain effects shall be produced where silence is maintained; there is no justification for analogous interpretation in other cases.

ZSS 1960, 1-61: H. F. Schmid: *Gemeinschaftskirchen in Italien und Dalmatien.* (Article.)

A very fully documented historical sketch of the development and organization of the Italian and Dalmatian churches belonging to confraternities, societies and other extra-parochial organizations.

ZSS 1960, 62-80: G. le Bras: *Le droit canon dans la littérature quodlibétique.* (Article.)

An extraordinarily detailed summary of the canonical subjects considered by many of the authors of Quodlibeta, who although theologians, often included canonical problems, a study of which would greatly enrich our knowledge of the classical law of the Church.

ZSS 1960, 81-111: H. Krause: Cessante causa cessat lex. (Article.)

K. traces the genesis of this principle in Gratian, its development under Innocent III, and its full evolution with the glosses. He then describes the vicissitudes it has undergone in recent years.

ZSS 1960, 135-220: P. Hofmeister: Die Excommunicatio regularis. (Article.)

A historical study of the penal regulations in force among religious, and in particular those governed by the rule of St. Benedict, from earliest times to the present day. The genesis of excommunicatio regularis and the various types of punishment in the various orders are considered in detail.

ZSS 1960, 221-238: L. Carlen: Zum Offizialat von Sitten im Mittelalter. (Article.)

Historical notes on the origins and activity of the Official of the bishopric of Sitten in Switzerland, which comprised the present canton of Valais and the district of Aigle, during the thirteenth and fourteenth centuries, and on the importance of his office in strengthening the bishop's hand.

ZSS 1960, 239-276: K. S. Bader: Arbiter arbitrator seu amicabile compositor. (Article.)

A heavily documented investigation of the use of the formula "arbiter arbitrator seu amicabile compositor" in the original records of arbitration processes in the countries north of the Alps.

ZSS 1960, 277-302: D. Lindner: Vom mittelalterlichen Zehntwesen in der Salzburger Kirchenprovinz. (Article.)

A historical conspectus of the regulations governing tithes in the province of Salzburg (comprising the dioceses of Brixen, Freising, Passau, Regensburg and Salzburg) during the Middle Ages.

ZSS 1960, 303-316: W. Engel: Spätmittelalterliche Treuebriefe des Wertheimer Klerus. (Article.)

An examination of a series of "letters of loyalty" written by members of the clergy of Wertheim from 1400 to 1518 to the local rulers. These constitute a unique stage in the development of German Caesaropapism.

ZSS 1960, 317-344: Azpilcueta und Covarruvias. (Article.)

As the sub-title indicates, this is a contribution towards the history of the doctrine of the two swords in Spain during her golden age, concentrating on the writings of two of her outstanding canonists.

ZSS 1960, 345-394: N. Grass: Pfalzkapellen und Hofkirchen in Oesterreich. (Article.)

This is a contribution towards the history of the capella regia, and deals with court churches and palatinate chapels in Austria.

ZSS 1960, 434-442: K. A. Fink: Frühe urkundliche Belege für die Auflösung des matrimonium ratum non consummatum durch päpstliche Dispensation. (Article.)

Cf. cn 1963, below.

RDC II/61, 32-60: G. Baccrabère: Exercice du droit de Visite. (Article.)

A continuation of an earlier article on the history of Canonical Visitation of the country parishes in the Toulouse diocese shortly before the Council of Trent. Cf. CLA 5, 14.

L II/61, 226: Fr. Fidelis, O.F.M.Cap.: De evangelii et regulae Franciscanae obligatione. (Article.)

A study of the controversies among Franciscans up to the promulgation of the Bull *Exivi de Paradiso* (1312) which marked the end of the Franciscan "golden century." The Spirituals had held against the Community that the Franciscan religious profession bound the religious to a literal observance of the gospel and of the rule. F. shows how the doctrine of the Community prevailed, that there is no *juridical* obligation to take as precept every gospel counsel, and that the friars were not bound to accept the *total* rule as preceptive. The article is well documented from sources of Franciscan *jus particulare*.

CR 1/61, 10-27 and 2/61, 85-98: F. Courtney, S.J.: The Administration of Penance. (Article.)

Public penance was the general rule up to the seventh century in the West and fifth in the East, when it was superseded by private penance. C. seeks to show, by a historical survey, that both forms of administration were sacramental, and to disprove the non-Catholic allegation that private penance was a novel and distinct development which became a Sacrament only as a result of twelfth-century scholastic theology.

RDC II/61, 3-31: J. Delanglade, S.J.: Le Juge, Serviteur de la Loi ou Gardien de la Justice selon la Tradition Théologique. (Article.)

Cf. cn 1869, below.

OAK II/61, 87-113: Georg May: Die Bedeutung der pseudo-isidorischen Sammlung für die Infamie im kanonischen Recht. (Article.)

The aim of pseudo-Isidore was to strengthen the independence of Bishops from the civil power. Infames could not accuse, so he has many grounds for infamia. In this he was following Benedictus Levita and the Capitula Angilramni (See M's article on B. Levita: CLA 5, 4.) Pseudo-Isidore did not introduce infamia into canon law, but it was he who made it important. M. lists later sources which ps.—Is. influenced.

LIBER I: NORMAE GENERALES

3 IDE I/61, part 1, 16-28: Concordat.

Text of the agreement between the Holy See and the Austrian Republic which became law on 13/8/1960.

4 OAK I/61, 3-19: P. Hofmeister, O.S.B.: Wohlerworbene Rechte. (Article.)

H. brings out how the canon law protects iura quaesita; even the Popes do not wish to take them away without the consent of the holders. Iura quaesita are modified in cns 744 § 1 and 1451, in each case for the common good. H. discusses iura quaesita in relation to rescripts and in relation to religious. Cf. cn 46, below.

17 ADC IV/60, 461: A. Gomez de Ayala: La commissione per l'interpretazione autentica del codex iuris canonici e il canone 17. (Article.)

Discusses the power of interpreting. A sentence in re peculiari has not the efficacy of law. Relation between the Motu proprio *Cum iuris canonici* and the canon . . . constitution *Benedictus Deus* Motu proprio *Alias Nos* Constitution *Immensa aeterni Dei*. The Commission and its aspects . . . , it has not the power supplendi legem. The powers of the Congregations relating to the interpretation of the canons.

- 25 IER 4/61, 273: T. Cunningham: Contrary custom and the Maynooth Synod Decrees. (Reply.)

Cf. cn 476 § 3 below.

- 46 OAK 1/61, 3-19: P. Hofmeister O.S.B.: Wohlerworbene Rechte. (Article.)

Does "non sustinetur" mean that the rescript is null? Some authors say that it is valid; H. favours nullity, arguing mainly from S.R.R. 4/7/31 (Dec. XXIII, 269.) Cf. cn 4, above.

- 66 CpR III-IV/61, 206-222: I. Ting Pong Lee, C.M.F.: De Apostolicis Facultatibus. (Article.)

A summary of the origin and development of the Faculties of S.C.P.F. with a description of the new formula and its relation to existing liturgical law.

- 66 RCR 2/61, 57-64: A. de Bonhome, S.J.: Les Facultés pour les pays de mission. (Article.)

The S.C.P.F. grants faculties to missionary countries for periods of ten years. This renewal has just taken place for the period 1961-1970. The author stresses the pastoral interest in the changes and novelties which took place; to conclude, he draws attention to what is of special interest to religious, priests, brothers and sisters. He does not give a systematic commentary on the faculties.

- 66 Per I/61, 39: L. Buijs, S.J.: Addenda ad commentarium in formulam facultatum decennialium. (Annotations.)

The promulgation of the new rubrics in *Rubricarum Instructum* requires that certain corrections be made in the text of the decennial faculties granted to missionary Ordinaries. Faculties 55 and 61 are abrogated; six others are corrected. These notes are supplementary to the commentary given in Per III/60, 341.

LIBER II: DE PERSONIS

- 89 L II/61, 149: Fr. Antoninus, O.F.M.Cap.: De patria potestate in antiqua et vigenti ecclesiastica legislatione. (Article.)

Cf. cn 1113, below.

- 98 §§ 2-4 J II/61, 263-270: M. Trivisonno: Chancery Matters in volving different Rites. (Article.)

The diversity of rite still remains a concern in regard to the validity or licitness of a number of juridical acts which may need to be processed through the chancery office. In this article T. offers the accumulation of the practical knowledge which he gained by frequent experience with such matters in the chancery office of Cleveland. He limits his discussion to the two most frequent points of contact with diversity of rite, namely, marriages and transfers of rite. In respect to marriages, he restricts his treatment to problems connected with prospective unions, so that matters of rite as related to the diocesan tribunal are not considered.

- 98 § 3 Per II/61, 137: C. Pujol: Regimen domus orientalis ritus in religione latina. (Article.)

Cf. cn 488, 5° below.

- 101 § 1, 1° RCR 2/61, 101: E. B.: Parité de suffrages. (Casus.)

Q. The general council is composed of four members only; in case of divided votes, there cannot be a majority? The answer refers to: *Notes pratiques de droit canonique* by van Biervliet, who maintains that the jurisprudence permits the Superior to intervene in the votes of the council, as long as the Constitutions do not forbid it. It must however always be recognized that the Superior has the right to nullify the parity of the votes.

- 105 CpR III-IV/61, 181-182: S. Goyeneche, C.M.F.: Superior's obligation of consulting Council. (Reply.)

A Superior cannot avoid consulting his council about important modifications in the fabric of a monastery on the plea that it is the property of the State, which will meet the expenses involved, unless the advice of the council is only demanded with reference to the cost of the modifications or if the State itself intends to make those modifications, even dependently on the Superior's request. The same principles apply if the Superior builds a new organ for the church at a benefactor's expense.

- 106 CpR III-IV/61, 185-189: S. Goyeneche, C.M.F.: Precedence between Major Superiors and Parish Priests. (Reply.)**

It is not easy to determine precedence between major superiors in exempt clerical religions and parish priests who are not their subjects, in view of the different degrees of jurisdiction involved. Where they proceed non collegialiter it would seem to be a matter for the judgement of the local Ordinary taking into account custom, etc. But the quasi-episcopal jurisdiction enjoyed by a major superior would suggest precedence over a parish priest. Where they proceed collegialiter cn 358 would suggest that precedence belongs to the coetus parochorum, though the major superiors and parish priests were summoned to the Roman Synod in the reverse order to that of cn 358.

- 124ff NRT 3/61, 271: E. Bergh, S.J.: La vie sacerdotale d'après le Synode Romain. (Article.)**

B. discusses the Roman Synod's chief work, the renewal of the priestly spirit, firstly in the allocutions of the Pope and secondly in the synodal decrees. The Pope stressed the priestly virtues, and in particular, the problem of personal contact with the people of Rome. The decrees aim at setting high standards and safeguards for priestly sanctity in detail, and legislate at length for the pastoral activities of the clergy.

- 132 Per II/61, 203: W. Bertrams: De caelibatu clericorum. (Article.)**

In various periodicals B. has written articles on this subject and has now assembled them into one volume entitled *Der Zölibat des Priesters*. Here he gives a brief summary of the book and suggests that the work has relevance to modern needs in the training of clerics and in making the celibate life of the priesthood attractive to young men.

- 135 ST 1/61, 41-51: E. F. Regatillo: Hora de rezo del Breviario según las nuevas rubricas. (Reply.)**

Some variations have been introduced by the new Code of Rubrics with reference to the time when Divine Office is to be said. Vespers when said in choir or in common should be said in the afternoon or evening, *i.e.*, from noon to midnight. The same is recommended in the private recitation of the Office.

Matins may be anticipated for a just cause in the afternoon of the preceeding day, but not before 2 p.m. A just cause means a reasonable cause. Should one anticipate without any reasonable cause then the substantial obligation of the Office is still fulfilled.

Lauds in choir or in common are to be said *primo mane*.

There is no obligation to say each hour at its own definite time. All privileges and indulgences and customs have been revoked, hence anticipation can never begin before 2 p.m.

[R. defends the opinion, now rendered obsolete by the reply of S.R.C. 28/12/60, that Lauds may still be anticipated in private recitation.]

- 135 HPR 1/61, 399: C. L. Parres, C.M.: Privilege of Anticipating: New Rubrics. (Reply.)**

In the absence of an official decision it seemed to C. that the privilege of anticipating Matins before two o'clock would not be contrary to the new Code of Rubrics but rather a concession beyond it. (Cf. HPR 5/61, 804 for revised view.)

- 135 HPR 3/61, 598-600: C. L. Parres, C.M.: Anticipation of Lauds Not Permitted Even in Private. (Reply.)**

Whatever doubt may have existed about the private anticipation of Lauds after the new Code of Rubrics (nn. 144, 145) has been dispelled by an official declaration of the S.C. Rit. published in the *Osservatore Romano*, 28/12/60 that Lauds may not be anticipated even in private.

- 135 HPR 5/61, 804: C. L. Parres, C.M.: Anticipation of Matins Earlier than Two O'clock. (Reply.)**

Because of a communication of the Assessor of the Sacred Oriental Congregation C. amends his former opinion (HPR 1/61, 399) on anticipation and now considers that all such privileges have been abrogated by the new Code.

- 135 AfER II/61, 100: J. Geerdes, W.F.: Anticipation of Lauds. (Reply.)**

Well informed Roman sources report that Faculty 55 of the Apostolic Faculties remains in force. Consequently the Ordinaries in territories dependent on the S.C.P.F. can still allow their priests to anticipate Lauds.

- 140 PdC 6/61, 339-341: Umberto da Arienzo, O.F.M.Cap.: Spettacoli pubblici e sospensione. (Reply.)**

Diocesan law forbidding clergy to attend any public theatre or cinema, etc., under pain of *ipso facto* suspension, can be made to include even exempt religious.

- 142 ST 4/61, 240-241: E. F. Regatillo: Descuento de precio en las compras de los colegios religiosos de objetos para sus colegiales. (Reply.)**

Discount obtained while buying for a school run by religious can be used as a payment for work, journeys, postage,

connected with the sale of such articles and apparatus to the pupils. If any is over, it should be used on behalf of the pupils either by allowing them to purchase the goods at a lower price, or by buying them more games and instruments of study, or painting and decorating or equipping their play-rooms or classrooms.

142 RCR 1/61, 45: E. B.: Revenus et commerce. (Casus.)

Cf. cn 592, below.

169 § 1, 2° RCR 1/61, 45: E.B.: Suffrages des infirmes. (Casus.)

The secret ballot, imposed under pain of nullity, is intended to avoid any public manifestation of votes, but there is no disadvantage if the teller is informed of the choice of a sick nun, confined to her room, from whom she receives the vote.

209 AfER I/61, 25: E. de Bekker, W.F.: Common Error. (Reply.)

B. explains the difference between public assistance at marriage without delegation, and publicly hearing confessions in church without jurisdiction. He concludes that the mere public celebration of marriage as such is to be considered doubtful as a basis of common error, if one abstracts from other concrete circumstances.

222 § 1 RCR 3/61, 115-122: E. Bergh, S.J.: La préparation du Concile. (Article.)

The article constitutes a kind of statement of the most important deeds accomplished by His Holiness John XXIII in preparation for the Second Ecumenical Council of the Vatican. It concludes by certain suggestions on the way that religious families can co-operate in the preparation of this great work.

222 RDT 2/61, 78-85: P. Hayoit: Le Concile oecuménique selon le droit actuel. (Article.)

Theological and juridical data about ecumenical councils in general, and especially about the second Council of the Vatican.

230 RDT 6/61, 321-326: P. Hayoit: Le rôle des Cardinaux dans le gouvernement de l'Eglise. (Article.)

Historical survey of the function of cardinals in the government of the Church, and brief discussion of present day canon law in these matters.

- 249 § 3 ME I/61, 64-77: A. Pugliese: *De Specifica Competentia S. C. De Disciplina Sacramentorum Declarandi Nullitatem Matrimonii Ad Sensum Canonis* 249 § 3. (Article.)

The general competence of this Congregation in regard to marriage is not only administrative and disciplinary, but also within certain limits judicial, not only because it has a watching brief over other tribunals, but also because it can at times in certain circumstances declare the nullity of marriage according to its own proper practice and *stylus*. So if the facts of the case are notorious according to cn 1747, 1° this Congregation can declare the marriage null, whether the case has been referred to it directly or through the Ordinary and without any judicial form except that provided for in its own *stylus*.

- 251 CpR I-II/61, 5-38: A. Gutiérrez, C.M.F.: *De organica Constitutione S.C. Episcoporum et Regularium necnon S.C. de Religiosis*, 1587-1960. (Article.)

Cf. above, General and Historical subjects, p. 4.

- 251 CpR I-II/61, 39-40: I. Mandelli, M.C.: *Studium seu Schola Practica De Religiosorum Iure*. (Article.)

An account of the nature of, and requirements for admission to, the Studium of the Congregation of Religious.

- 251 CpR I-II/61, 41-45: A. Gutiérrez, C.M.F. and D. J. Palacios, F.S.C.: *Pontificium Opus Vocationum Religiosarum*. (Article.)

Account of the origin and juridical nature of this recently constituted Pontifical Work.

- 271 J I/61, 27-46: A. Szentirmai: *The Primate of Hungary*. (Article.)

Most manuals and commentators on the C.J.C. mention that the exception made by cn 271 (*nisi jure particulari de aliquibus aliud constet*) applies to the Metropolitan of Esztergom as Primate of Hungary, leaving to him his specialis jurisdictio. But there has never been an attempt to investigate scientifically the evolution and the present state of the metropolitan of Esztergom's primatial powers. S. gives a critical analysis of this subject in which he eradicates some unhistorical views, while by no means denying that the primate of Hungary is the only primate in the Latin Church now possessing a certain supra-metropolitan jurisdiction.

339 § 1 IER 3/61, 199: T. Cunningham: New list of Missa pro populo days. (Notes.)

Discussion of a number of problems that may arise in the interpretation of the new list of Missa pro populo days: cf. S.C.C. 3/12/1960.

- (a) The obligation is attached to the feasts of the Epiphany and SS. Peter and Paul in Ireland, although they are not at present feasts of precept there. Reason: the decree lists the feasts of precept in the universal calendar, and clearly these feasts are in that category.
- (b) The new list includes *festum Patroni dioecesis*, and the clause *contrariis quibuscumque non obstantibus* is added to the decree. But C. is of the opinion that the rescript of 1952, which dispensed from the obligation on feasts of diocesan patrons in Ireland, has not been revoked, on the grounds that the revocatory clause is not detailed enough to rescind a dispensation granted in a particular rescript.
- (c) The meaning of dedication of a church in the two anniversary feasts in particular calendars. Dedication in this context is clearly confined to consecration (cf. text of Code of Rubrics) and excludes solemn blessing.
- (d) Among the four feasts of patrons found on the new list, the obligation is now attached to the feast of the principal duly constituted patron of a place, town or city. Considering cn 1278 and decree of S.R.C. 23/3/1630, in practice, it may be said that the obligation of Missa pro populo will arise on the score of the feast of the local patron only if (i) the patron is modern (post-1630) and formally constituted as such, or (ii) the patron is medieval (pre-1630) and distinct from the titular of the local church.

339 § 1 EL I/61, 61-64: Anon.: Commentary on Decree of S.C.C., 3/12/60.

Indicates the changes involved in the application of the Missa pro populo and the reasons for the law legislation. The new list excludes all particular feasts on which the obligation formerly existed. Indults granting a reduction in the obligation remain in force in so far as they are not opposed to the new Decree.

339 § 1 Per II/61, 222: M. Zalba, S.J.: Annotationes in Decretum de Missa pro Populo. (Article.)

A commentary on the Decree of 3rd December, 1960. Z. explains purpose of S.C.C. in the decree; why certain old obligations have been abrogated and new ones introduced.

339 § 1 CpR III-IV/61, 154-156: A. Diez, C.M.F.: **Commentary on Decree of S.C.C., 3/12/60.**

D. explains changes in the obligation of the Missa pro populo and points out that, since the basis of the obligation has been changed, there is no longer an obligation on suppressed feasts of particular law.

343 RDC II/61, 32-60: G. Baccrabère: **Exercice du droit de visite.** (Article.)

Cf. above, General and Historical Subjects, p. 6.

356ff J II/61, 170-203: J. Abbo: **The Roman Synod.** (Article.)

Cf. above, General and Historical Subjects, p. 3.

356ff IER 6/61, 377: F. X. Murphy, C.S.S.R.: **The Roman Synod: II—The Promulgation.** (Article.)

Cf. above, General and Historical Subjects, p. 3.

356ff ZSS 1960, 395-429: J. Sawicki: **Geschichte und heutiger Stand der Vorarbeiten zur Gesamtausgabe der polnischen Synodalstatuten.** (Article.)

Cf. above, General and Historical Subjects, p. 3.

413 ME I/61, 7-23: F. Romita: **Decreta S.C. Concilii: (1) Novus Index Statuitur Dierum Festorum, Quibus Inest Obligatio Litandi Sacrum Pro Populo: (2) De Servitio Choralis Novo Rubricarum Codici Accommodando.** (Annotationes.)

465 § 4 ST 3/61, 179-180: E. F. Regatillo: **Vicario Substituto.** (Reply.)

A parish priest is going to be absent for five days. He leaves a substitute who has no faculties for hearing confessions. Can this substitute hear confessions in virtue of the ordinary jurisdiction which he possesses as the substitute of the parish priest? The difficulty is that the parish priest did not obtain any permission from the bishop for this substitute.

If the parish priest's absence is for more than a week, he cannot appoint a substitute except when he is absent for the gravest reasons, has informed the bishop, or will inform him as soon as possible after his departure. For absences of less than a week the Code does not demand that a substitute be appointed.

But R. asserts a new doctrine not found in any of the manualists, that the parish priest can constitute a substitute

without leave of the bishop if he is to be absent for a period under a week. But R. goes on to say that he would advise the parish priest to get in touch with the bishop for his approbation, especially in the case of a priest who had no faculties to hear confessions.

466 IER 4/61, 275: P. Muldoon: The Missa pro populo on the Feast of the Titular. (Reply.)

The revised list of the days on which residential bishops and parish priests must offer the Missa pro populo attaches this obligation to the feast of "*titulus Ecclesiae propriae*." Since this provision is entirely new, M. discusses it, dealing separately with the two elements in the description of the feast: the *titulus* and the meaning of *Ecclesia propria*. His practical conclusions regarding the latter are as follows:

- (a) when a P.P. alone is in charge of a parish containing more than one church, he is bound to the Missa pro populo on the feast of each individual titular.
- (b) when a P.P. is in charge of more than one parish, he is bound to the Missa pro populo on the feast of each titular.
- (c) when a parish priest is assisted by one or more curates, we must distinguish:
 1. when the P.P. is in permanent charge of the (principal) parish church and the curates have permanent exclusive care of the other(s), then the P.P. is bound to the Missa pro populo only on the feast of the titular of the parish church.
 2. when the P.P. has charge of a succursal church and the curates have permanent exclusive charge of the others, among these the parish church, then the P.P. is bound to the Missa pro populo on the feast of the titular of his succursal church, because it has been expressly assigned to him; and also on the feast of the titular of the parish church, because his appointment as P.P. is an equivalent assigning of that church to him.
 3. when all the priests are corporately responsible for the ministry in all the churches of the parish, then the P.P. is certainly bound to the Missa pro populo on the feast of the titular of the parish church. It would appear that he is not bound for the other churches; although these have not been assigned to the permanent exclusive charge of the curates, yet they are not the exclusive responsibility of the P.P.

466 § 1 EL I/61, 61-64: Anon.: Commentary on Decree S.C.C., 3/12/60.

Cf. cn 339 § 1, above.

466 § 1 Per II/61, 222: M. Zalba, S.J.: Annotationes in Decretum de Missa pro Populo. (Article.)

Cf. cn 339 § 1, above.

466 § 1 CpR III-IV/61, 154-156: A. Diez, C.M.F.: Commentary on Decree S.C.C., 3/12/60.

Cf. cn 339 § 1, above.

466 § 1 IER 3/61, 199: T. Cunningham: New list of Missa pro populo days. (Notes.)

Cf. cn 339 § 1, above.

466 § 1 CR 3/61, 165-168: L. L. McReavy: Variations in the "Missa pro Populo" Obligation. (Reply.)

Explains how the incidence of the obligation has come to vary from diocese to diocese in England. A parish priest can safely follow the rule of his diocesan *Ordo*.

467 § 1 IER 1/61, 47: T. Cunningham: Pastoral visitation of homes. (Reply.)

According to the law of the Code, one of the duties of a P.P. is to acquire a pastoral knowledge of his flock. There may be a number of possible ways of fulfilling this obligation, but for P.P.s in Ireland the way to fulfil it was determined in the 1927 Plenary Council: "*parochi . . . domus omnium fidelium . . . saltem semel quoque anno visitare non omittant.*" Decree 89 of the new statutes now changes the previous *parochi non omittant visitare* to the more severe *praecipimus sub gravi ut parochi visitent*, implying that the legislators did not consider that other means had had or would have the desired effect and now wished to emphasize the necessity of using the means they had selected, namely pastoral visitation of homes.

476 § 3 IER 4/61, 273: T. Cunningham: Contrary custom and the Maynooth Synod Decrees. (Reply.)

From the nature of the case, one cannot plead contrary immemorial custom or any contrary custom against the obligation of a new law, since there cannot be a contrary custom unless there is some law to be contrary to. Although decree

97, which contains the phrase *audito parochi* in the appointment of curates, is a new decree, the norm which it gives is not a new law, but simply the law of the Code. Against this law of the Code a contrary immemorial custom exists in Ireland. This custom has now become contrary to decree 97 as well as to the Code. But when a new decree does not repeat either the law of the Code or any other existing law, there can be no custom contrary to it at the outset, or at any stage in its subsequent history except in accordance with the principles of canons 25-27.

LIBER II, PARS II: DE RELIGIOSIS

- 487 CpR I-II/61, 77-118: F. Bogdan, S.A.C.: *Conspectus bibliographicus litteraturae canonisticae de iure religiosorum pro tempore Pontificatus Pii Papae XII.* (Article.)**

An exhaustive survey of canonical literature on all aspects of the religious life.

- 487 VR II/61, 113-115: B. Frisón, C.M.F.: *Formas del Estado Religioso Regular.* (Reply.)**

Discussion of the distinction between Canons Regular, Monks, Mendicants and Clerics Regular; and of the monastic, eremitical and cenobitical life, with special reference to the Carthusians.

- 487 VR III/61, 177-180: B. Frisón, C.M.F.: *Fines de los Institutos Religiosos.* (Reply.)**

For some time now the description *principal* and *secondary* ends has been discarded, as inexact, in favour of the description *general* (evangelical perfection, common to all) and *special* (particular to each institute). Historically, the relation of these ends to each other has undergone a considerable evolution, which F. analyses here, with special reference to the Claretians.

- 487ff J II/61, 204-235: B. Frisón: *The Laws of Training in the Apostolic Constitution Sedes Sapientiae.* (Article.)**

The Apostolic Constitution *Sedes Sapientiae*, containing Principles and General Statutes for those called to States of Perfection, was promulgated on May 31, 1956. Title III of

the Constitution contains "the laws of training," and F., following closely the arrangement of this Title, deals with: (1) Comparison of the new legislation with the existing law; (2) Extension of the new legislation; (3) Interpretation of the new legislation.

- 487ff RfR II/61, 145-147: J. F. Gallen, S.J.: Directories and custom books. (Reply.)**

Approval is necessary before the adoption of a revised spiritual directory.

- 488 REB II/61, 239-302: D. Basilio Penido, O.S.B.: Considerações sobre o Problema Atual do Monaquismo. (Article.)**

An analysis of the essential distinction between monasticism and other forms of Religious Life, comprising a brief historical review of the monastic ideal. Reference to the Thomistic thesis of the primacy of the contemplative life over the active—the basis of monasticism. In their internal organization, in the various laws and dispositions which adapt their Primitive Rule to modern conditions, the Monastic Orders should bear in mind this basic concept—otherwise they lose their essential character and fail in their vocation within the Church.

- 488, 5° RCR 1/61, 41: E. B.: Maisons filiales. (Casus.)**

In the case proposed, many questions arise: the conditions of a daughter house, the rights and duties of Superiors, the minimum frequency of the visits of the Superior, houses with two Sisters. The answer refers to a reply of the S.C. Relig. dated 1/2/24 and to well-known authors, saying that the house, strictly filiated, must not count more than three Sisters and that it has no autonomy, but that the Sisters are members of the larger community.

- 488, 5° Per II/61, 137: C. Pujol: Regimen domus orientalis ritus in religione latina. (Article.)**

When a house of a Latin religious institute is attached to an Eastern rite it is subjected to Oriental law as defined in cn 5 § 1 in *De Religiosis* of the Oriental Code. There are two exceptions to this principle: (a) the internal regimen is regulated by the particular law of the institute; (b) privileges granted by the Holy See (and they include privileges derived from any of the sources given in cn 613 § 1 of our Code and from custom and prescription) remain in force. In everything that pertains to *rite* (e.g., fasting and abstinence, holy days) the religious are subject to the Oriental law.

488, 7° CpR I-II/61, 59-76: Ae. Gambari, S.M.M.: Iurisprudencia S.C. de Religiosis in applicanda Const. Apost. Sponsa Christi. (Article.)

G. explains the practice of S.C. Relig. as being based on the need for a return to the original principles of the monastic life with necessary accommodation to present day circumstances. He explains the mind and practice of the S.C. with regard to such matters as restoration of solemn vows and difficulties concerning Papal Enclosure; the creation and government of Federations; Extern and Lay Sisters; use of the Pontifical rite for Consecration of Virgins; transfer to simple vows and Oblates.

492 § 1 ST 4/61, 231-233: E. F. Regatillo: Fundación de Congregaciones Religiosas y Pias Sociedades. (Reply.)

If a group of people gather round a pious and holy man or woman with a view to the foundation of another congregation or pious union, since these constitute a social status in the Church (cn 531) they must be erected into moral persons by the bishop (cn 100 § 1). Vicars capitular and Vicars General have no power in this matter. The bishop however must first consult the Holy See, explaining the end and the general lines of the congregation or pious union. He may not tolerate a de facto foundation of a new congregation consisting of members of an old established congregation, who have broken away and wish to live with another rule and another habit; nor may he tolerate any gathering of lay folk who are living in community as though they were religious. He may permit certain attempts to found a new congregation or pious union before he refers the matter to the Holy See.

499ff RfR II/61, 143-145: J. F. Gallen, S.J.: Election of mother general. (Reply.)

Provisions for interim government when the chapter has to be suspended while waiting for a reply to a postulation.

499ff RfR II/61, 145: J. F. Gallen, S.J.: Chapter delegates. (Reply.)

In the house system for the election of delegates only religious who are appointed as members of the local community have the right to vote for delegates from this house.

499ff RfR III/61, 221: J. F. Gallen, S.J.: Permission for votive Masses for special occasions. (Reply.)

II Class Votive Masses for special occasions must be

authorized by a local ordinary; higher superiors in clerical exempt religious institutes are not competent in this matter.

501 J I/61, 1-26: J. I. O'Connor: Dominative power of Religious Superiors. (Article.)

O'C. discusses the various views held by canonists on the nature of the dominative power of religious superiors and chapters. Larraona's theory of public dominative power gradually won followers, and the reply of the P.C.I.C., 26/3/1952, which finally settled the question, is taken as an explicit approbation of this theory.

501 VR I/61, 26-30: B. Frisón, C.M.F.: La Cruz de la Autoridad en las Federaciones. (Article.)

F., continuing his discussion of authority in federations of nuns (CLA 6, 18), deals with the extent and exercise of the authority of the Mother President; the question of her right to receive the profession of the nuns; and her right—recognized by all particular statutes—to privileged correspondence with all the religious of the federation.

501 § 1 RCR 3/61, 126-138: R. Carpentier, S.J.: L'exercice de l'autorité dans la vie religieuse. (Article.)

The conference given by C. at the Assemblée Générale de l'Union des Supérieures Majeures de Belgique forms this article. He considers the practical aspect of government. He points out that the religious state consists in contemplating God in all things and that, consequently, authority in a religious community ought to exercise itself in a deep contemplative way. The Superior must see God in all things, and especially in her community and her inferiors.

505 VR III/61, 174-176: M. C. de Anta, C.M.F.: Destitución de Superiores y Consultores. (Reply.)

Minor local superiors appointed for a definite time must not be removed without just and reasonable cause before the time expires. Those appointed without a definite time can be removed at any time and even without cause. The office of local assistants and local bursar is obligatory. Generally they are appointed without a definite time and so are removable at the will of the competent superior but in accordance with prudence and charity.

The Superior General can, without reference to the Provincial, remove the local superior as well as local assistants

and bursar, though this would ordinarily be indiscreet, particularly if it is the Provincial who normally makes these appointments.

Vacant offices, above all those of government and administration, should be filled promptly, and without resort to interim provision unless definitive is impossible.

507 § 1 RCR 1/61, 46: E. B.: Maîtresse des novices au Chapitre général. (Casus.)

To the question whether the Mistress of Novices could participate as an active member of the General Chapter, the answer indicates that such a practice would not be in accordance with the habitual jurisprudence of the S.C. Relig.

516 VR III/61, 174-176: M. C. de Anta, C.M.F.: Destitución de Superiores y Consultores. (Reply.)

Cf. cn 505, above.

520 CME II/61, 142-151: C. Eykens: Speciale gevallen van biechtjurisdiktie. (Article.)

In its first part this article discusses the confessor for sisters, according to universal and diocesan law. The second part is concerned with the function of the priest in general (Mass and Confession) in camps, on trips and pilgrimages. The basis of this is the Instruction of the Belgian bishops of 8/17/55 granting special faculties to priests accompanying youth camps and pilgrimages in Belgium. Jurisdiction given by Rome for a pilgrimage abroad and approved by one of the Belgian bishops is also mentioned.

521 RfR II/61, 139-140: J. F. Gallen, S.J.: The extraordinary confessor of sisters. (Reply.)

Unless the local ordinary determines otherwise, the extraordinary possesses jurisdiction for the entire time that he is extraordinary and not merely at the time of the extraordinary confessions.

522f ITQ I/61, 29-44: E. McCaffrey, O.D.C.: Confessors of nuns and sisters. (Article.)

Continuation of McC's commentary on the two preceding cns (Cf. CLA 5, 19, 34, 68). McC. considers it more probable that the approbation mentioned in cn 523 must be given by the Ordinary of the place where the confession is heard. Cf. cn 2414, below.

- 523 PdC 11/61, 618: S. Tumbas, S.J.: "**Ordinarius loci**" nei **canoni 522-523**. (Letter.)

T. collects opinions defending the broad interpretation of *approbatum* in cn 523, so as to include a confessor approved by any Ordinary.

- 523 ME I/61, 53-63: L. Bender: **Confessio Religiosae Graviter Aegrotantis**. (Case.)

B. holds the strict interpretation that only a confessor approved by the ordinary of the place where the sick nun resides can hear her confession. He avers that almost all authors hold this opinion as certain. No one would hold any contrary opinion as certain, but only as probable or doubtful. If the priest approved by the ordinary of another diocese were to hear this sick nun's confession in her own diocese, the confession would be objectively invalid and illicit.

- 532 § 1 IDE II/61, part 1, 150-160: G. Forchielli: Il "**Syndicus apostolicus mendicantium**" gode di tutte le immunità? (Article.)

The term "*syndicus apostolicus*" is not found in the Code. It is mentioned in some medieval documents and in the Constitutions of some mendicants. The juridical figure arises from the fact that temporal goods must be administered according to the Constitutions of an Order or Congregation and mendicants are sometimes forbidden even to administer property. One who performs this service for them is called "*syndicus apostolicus*," because he is appointed by the Holy See either directly or through the Chapter of the Order. Should a *syndicus apostolicus* build a church or other building primarily connected with religion it is exempt; but should he build a hotel or open a business in no way related to the service of God exemption does not hold.

- 538 VR I/61, 47: A. Peinador, C.M.F.: **Padres Alcohólicos y Vocación**. (Reply.)

However good she may appear to be herself, admission to religion of one who is of doubtful antecedents (father alcoholic, mother committed suicide) has many dangers, *viz.*, possibility of inherited evil traits, of inferiority complex leading to unpleasant reactions, of injury to the prestige of the institute.

- 538 RCR 1/61, 12-33: M. Denis, S.J.: **Religieux mécontents, religieux malheureux**. (Article.)

The phenomenon of discontent is not peculiar to the religious life, but it is not normal that a religious should not

be happy in the service of the Lord. Possible sources of discontent are these: boredom, frustration, fear; and as remedies: wanting to pay the price of perfection, humility and simplicity, the sacrament of obedience and kindness. The superiors of religious Institutes have to provide conditions of a truly spiritual life to real religious vocations.

- 543 § 1 RfR III/61, 222: J. F. Gallen, S.J.: Permission for alienation and the contracting of debts. (Reply.)**

The faculty of the Apostolic Delegate has been reduced to 300,000 dollars in ordinary currency.

- 548 RCR 3/61, 159: A. de B.: Constitution de dots. (Casus.)**

- 551 § 1** The capital given by a benefactor to be used as a dowry for a less fortunate candidate follows the rule of all dowries in the Code. If the constitution of dowries must necessarily be used by various candidates, the capital of the dowry will not pass to the religious Institute at the death of the religious to whom it was applied; if this person leaves the Institute, the latter must not and cannot give the capital to her.

- 552 § 1 VR I/61, 48-49: G. Escudero, C.M.F.: Exploración, Vestición de Hábito y Profesión Religiosa. (Reply.)**

Cf. cn 574 § 1, below.

- 554 § 1 RCR 2/61, 102: E. B.: Noviciat commun. (Casus.)**

The novitiate must be in a house of the religious Congregation. For serious reasons, an indult may be obtained from the Holy See to group novices from different religious Congregations in a common novitiate.

- 559 § 1 RCR 1/61, 46: E.B.: Maîtresse des novices au Chapitre général. (Casus.)**

Cf. cn 507 § 1, above.

- 561 § 1 RCR 2/61, 103: A. de B.: Supérieurs majeurs et noviciat. (Casus.)**

To the question: What are the relations of major Superiors with the novitiate? The answer points out, that, in fact, many constitutions expressly recognize that major superiors have a power of direction and control. The mind of the Holy See is very explicit on this subject, and is expressed in the norms of the S.C.P.F. and in the questionnaire for the quinquennial report.

574 § 1 VR I/61, 48-49: G. Escudero, C.M.F.: Exploración, Vestición de Hábito y Profesión Religiosa. (Reply.)

While postulancy may be spent in any house, reception of the habit, which is normally the beginning of the novitiate, must take place in the novitiate. Lawfulness requires that the profession be made in the novitiate house, though it may be any novitiate house of the institute.

In all cases things must be so arranged that the required canonical examination is completed before transfer or that there is time after transfer for the prescribed two months' notice to the local Ordinary.

575 § 1 RCR 1/61, 40: E.B.: Nature et valeur des vœux solennels. (Casus).

The question concerns the specific nature of solemn vows. B. gives the different views of the canonists on the subject. Some affirm that there is an intrinsic difference between solemn vows and simple vows; others see in the "solemnity," the consequence of a positive will of the Church. It is indisputable that the solemn vow represents the supreme degree of engagement to the state of perfection.

576 § 1 RfR III/61, 219: J. F. Gallen, S.J.: The rite of religious profession. (Reply).

Changes caused by the new rubrics in the rite of religious profession.

581 CpR III-IV/61, 171-180: A. Card. Larraona, C.M.F.: Commentarium Codicis.

L. gives a brief history of the development of this provision of law, the position of the cn in the Schemata and the development of the text of the cn. The prohibition and precept of the cn apply solely to the temporarily professed who must make solemn profession, and who have property *actu vel iure*. The renunciation must be made even if the property is intended for the religion. Failure in the latter case leaves some doubt as to ownership of property actually possessed. Religious may not renounce what is only possessed in *spe* as he thus injures the rights of the religious. L. points out that there is no reason now for indults dispensing the obligation. The obligation of confirming the renunciation in civil law applies to the fullest extent that the civil law permits, but the canonical renunciation is always valid from the moment of profession.

583, 1° VR II/61, 111-112: G. Escudero, C.M.F.: Renuncia del Patrimonio. (Reply).

If there is question of a considerable sum, patrimony may not be renounced in favour of anyone without authorization of the Holy See. Religious superiors have no part either in granting permission or refusing it. It is more conformable to the mind of the Church not to seek such authorization.

583 RCR 1/61, 43: E.B.: Renonciation à un héritage. (Casus).

To the question: Is it permitted for a professed religious of simple vows in a Congregation, on the occasion of the sharing of the family patrimony, to renounce her share in favour of her brothers and sisters? The answer inclines towards the negative and suggests a dispensation from the Holy See, unless the amount is a small fraction of the patrimony, a quarter at most, if the major Superiors allow it.

592 RCR 1/61, 45: E.B.: Revenus et commerce. (Casus).

B. points out that the prohibition of trade affects the individual religious as well as the community, even if exercised through an intermediary.

593 RCR 1/61, 33-39: R. Carpentier, S.J.: Equilibre et adaptation. (Article).

Although in the form of an article, C. gives a commentary on the study of Canon G. Huyghe, *Equilibre et adaptation*, in the Collection *Problèmes de la Religieuse d'aujourd'hui*. This work groups the problems into four sections: (1) principal difficulties at the present time; (2) formation and adapted structures; (3) school of formation for superiors; (4) apostolic life. Canon Huyghe's book does not pretend to evolve a new theology of the religious life; he tries to apply it.

595 § 1, 2° RCR 2/61, 99: E.B.: Petit Office de la Sainte Vierge et nouvelles rubriques. (Casus).

The Little Office of the Blessed Virgin, being inserted in the body of the Roman Breviary, does not constitute a simple appendix. The S.R.C. has furnished the editors of liturgical books with precise indications for the writing of new editions, including those of the Little Office. The casus points out the changes imposed by the Roman authorities.

- 601 VR I/61, 45-47: A. Peinador, C.M.F.: *Acerca de la Clausura.* (Reply).

A nun who goes without permission to a part of the monastery assigned to the education of children acts wrongly and should be punished by the superior according to the gravity of the fault but she does not incur excommunication. It should be prevented but is not a matter of very great importance if children, not of the College, enter at times of their own initiative with the other children. Meeting and greeting friends on the occasion of the opening of the enclosure door for some necessity is opposed to the rigour of enclosure and should be forbidden, but no excommunication is incurred since there is no illicit egress or ingress.

- 610 § 1 VR I/61, 18-25: G. M. de Antóñana, C.M.F.: *Horario en el rezo del Oficio.* (Reply.)

Explanation of the application of the new rubrics to the choral recitation of the office proper to enclosed nuns.

- 611 VR III/61, 171-173: A. Peinador, C.M.F.: *Sobre Visitas y Visitadores.* (Reply.)

It is with the local Ordinary that religious enjoy the right of privileged correspondence but not, unless the constitutions provide otherwise, with the Ecclesiastical Superior or Episcopal Delegate.

- 619 PdC 6/61, 339-341: Umberto da Arienzo, O.F.M.Cap.: *Spettacoli pubblici e sospensione.* (Reply.)

Cf. cn 140, above.

- 637 CpR III-IV/61, 190-205: L. Taché, C.S.Sp.: *De Religioso Clerico Inidoneo.* (Article.)

T. is concerned principally with the temporarily professed religious who cannot be promoted to Orders because of illness or some bodily defect. He examines the history of the law and cns 637 and 647. He points out that such a religious may be dismissed or refused further profession if, apart from health reasons, he is unsuitable, or even if the illness itself renders him incapable of study, *e.g.*, migraine. Otherwise the religion must retain the religious. T. suggests a change in the law permitting dismissal or refusal of further profession in such cases. He argues from the impossibility nowadays of transfer to the lay brother state, the notion of the clerical religious vocation in *Sedes Sapientiae* and the burden imposed on the religion in retaining such members.

- 640 AdC 12/61, 183-4: A. Bride: Port de l'habit religieux après sécularization. (Reply.)**

A secularized religious persists in wearing the habit on the grounds that she was treated unjustly and will be re-instated. May she receive the Sacraments? B. counsels a cautious and tolerant approach. The mere wearing of the habit is not necessarily tantamount to a publicly known spirit of revolt against authority. In doubt, refer the matter to the Ordinary, who may consider it opportune to issue a formal monitio.

- 647 CpR III-IV/61, 190-205: L. Taché, C.S.Sp.: De Religioso Clerico Inidoneo. (Article.)**

Cf. cn 637, above.

- 684 P 3/61, 251-2: P. R. Coyle: Funds of Lay Societies. (Reply.)**

Administration of the funds of these societies is free from any ecclesiastical supervision. The P.P., therefore, has no more rights than any other member over the property of such a society.

- 685 F 2/61, 101: D. Schlegel, O.S.B.: The Priest and The Secular Institute. (Article.)**

General introduction, with addresses in England for further information.

- 685 CR 5/61, 276-288: G. Reidy, O.F.M.: The Secular Institutes: Their Universal Relevance. (Article.)**

R. explains the canonical status of secular institutes, the distinction between them and religious institutes, their origin and their phenomenal growth in the Church as a whole, though not so much in England and Ireland, especially since 1947. He argues that they are an essential, providential and universally relevant development in the life of the Church, which deserves to be not merely welcomed but positively fostered.

- 685 CpR I-II/61, 46-58: D.-M. Huot, S.M.M.: De Institutis praesertim Clericalibus. (Article.)**

After a brief introduction H. considers the objections to the idea of a clerical secular institute. He points out that such institutes are concerned with the activity not of lay people, but of people living in the world and this includes secular priests. He reconciles the duties of the priest member to his local Ordinary and to the institute and points out the approval given by the Popes to this form of institute.

LIBER III: DE REBUS

- 730 VR I/61, 41-43: A. Peinador, C.M.F.: Primeras Comuniones y Simonía. (Reply.)**

To require payment of a certain sum from those making First Communion is simony if the money is sought precisely on this ground or as recompense for previous preparation or instruction. Not, however, if on the occasion of this preparation, spiritual exercises, etc., it is sought as an alms or stipend for the support of the priest who has rendered this service. Even then, it is unlawful if it causes scandal.

- 731 § 2 CR 4/61, 235-237: L. L. McReavy: Absolution of Dying Non-Catholics. (Reply.)**

Conditional absolution of baptized dying non-Catholics, whose good faith cannot prudently be disturbed, is probably lawful; but, in spite of the principle of moralists that one is bound to give a dying penitent the benefit of a doubt about the validity of an absolution, there is no obligation to absolve in the case in question.

- 733 § 1 HPR 3/61, 597-598: C. L. Parres, C.M.: Rubrics for Communion Before or After Mass. (Reply.)**

The rubrics of the Roman Ritual for the distribution of Holy Communion outside of Mass have not been changed by the new Code of Rubrics. (Cf. Code cn 502.)

- 733 § 1 HPR 4/61, 701-702: C. L. Parres, C.M.: Extra Hosts on Communion Calls. (Reply.)**

Ordinarily it is not lawful to give a communicant more than one host. However for a reasonable cause this may be done: *e.g.*, in the case of a priest on his Communion round who discovers that he has too many hosts and finds it inconvenient, because of his other engagements, to return to the church with the extra hosts.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. I:
DE BAPTISMO**

- 737 § 1 AER 3/61, 206: F. J. Connell, C.SS.R.: Valid Matter for Baptism. (Reply.)**

C. defends his reply given in AER 6/60, 422 (CLA 5, 24) against Fr. Farraher, S.J. in TS IV/60, 613. F. considers that a sodium chloride solution is certainly valid matter for Baptism. C. repeats that although 99% water this liquid is doubtful matter. Tears and saliva are known to be 98.1% and 98% water, but are regarded as invalid matter. Valid matter must not only be commonly *known* to be water but must also be commonly *called* water.

- 744 CME IV/61, 388-393: C. Eykens: Le Droit canon et le baptême des adultes. (Article.)**

This article intends to give the priest a practical survey of all the requirements for the Baptism of adults. It discusses: the delegation from the Ordinary, the conditions for such a Baptism (investigation of the canonical situation of the candidate, judgement on the instruction given), the rites, registration and notifications. The instructions assembled here were taken from the Code on the one hand and from the diocesan Statutes together with the practice of the Chancery of Malines on the other.

- 751 P 2/61, 152-5: P. R. Coyle: Deferring Baptism of children of indifferent Catholics. (Reply.)**

A possible hope of Catholic education of the child is sufficient. Moral certainty is not necessary. If this hope exists the child can and ought to be baptised when the parents request it, though they are non-practising or even invalidly married.

- 752 AfER I/61, 24: E. de Bekker, W.F.: Dispositions necessary for Baptism. (Reply.)**

The fourth wife of a pagan is seriously ill and certain to die. She wants to be baptized, but refuses to promise to leave her husband if she recovers. She should not be refused Baptism on this account, because she is certain to die and she may well have considered that polygamy was no serious moral offence.

765, 4° AdC 9/61, 142-144: M. Huftier: Choix d'un parrain non prévenu. (Reply.)

In a mission hospital parents insist that their children be baptised before leaving, and often elect a godparent who would agree if asked, but cannot be informed. A nurse stands proxy. H. concludes from papal documents that formal acceptance is necessary for validity, but that an express appointment of a proxy by the sponsor is not required for validity where the custom exists of a general mandate. However, such a custom is to be reprobated.

LIBER III, PARS I: DE SACRAMENTIS: TIT. II: DE CONFIRMATIONE

780 AdC 12/61, 186-7: P. Soullard, O.P.: Confirmation et imposition des mains. (Reply.)

The essential sacramental rite consists in the anointing with chrism on the forehead. Direct contact is required and use of an instrument forbidden by cns 780-781. No further imposition of hands is required for validity.

782 IER 4/61, 272: T. Cunningham: Notice of Confirmation to the Ordinary. (Reply.)

The 1946 decree *Spiritus Sancti munera* contained two regulations in the matter of making reports on Confirmations conferred by extraordinary ministers:

- (a) the extraordinary minister is obliged to send immediately an authentic notice to his proper diocesan Ordinary on each occasion he administers Confirmation.
- (b) the local Ordinary had, at the beginning of each year, to send a report to S.C.S. on the number of extraordinary administrations during the previous year and on the method adopted by extraordinary ministers in exercising their power.

In 1957, S.C.S. cancelled the second of these regulations—the annual report from the Ordinaries is no longer necessary. But there has been no exemption from the first regulation which remains intact. It cannot be maintained that the cancellation of the second regulation abolished the need for the first, because the 1957 decree, while abrogating the obligation of the annual report, reminded local Ordinaries of their obligation to continue their vigilance over the extraordinary administration of Confirmation in their territories.

782 § 2 CR 3/61, 170-174: L. L. McReavy: Sundry Sacramental Questions from a Missionary. (Reply.)

Commentators differ about the gravity of the obligation to use a faculty to confirm persons in danger of death, but it is solidly probable that failure to respond to reasonable requests is only grave when habitual, or motivated by formal contempt, or gravely scandalous. The fact that a baptized infant or newly baptized adult needs no more for salvation does not excuse the priest from this obligation. The Sacrament is a means of added grace and glory to them.

782 § 2 CME IV/61, 402-405: C. Eykens: Vormsel bij stervensgevaar in instituten waar kinderen verpleegd worden. (Article.)

On 11/1/55 the S.C.S. conceded an indult to the diocese of Malines, granting power to administer Confirmation in danger of death to the chaplains of maternity hospitals. The same S.C.S. recently interpreted this indult. The power to administer Confirmation exists for the chaplains of homes for abandoned children, of maternity hospitals, or of hospitals having a special section for children. It is valid only for children under seven years of age, residing in one of the institutions or sections mentioned above. The chaplain cannot delegate his power. The pastor or the priest regarded as such in whose parish the institution is situated, has wider powers than the chaplain; his power to administer the sacrament is not limited by the age or the place of residence of the confirmandi.

794 § 1 AER 5/61, 353: F. J. Connell, C.SS.R.: The Confirmation Sponsor. (Reply.)

The "just cause" for having one sponsor for many children is easily and often verified in practice.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. III:
DE SSMA. EUCHARISTIA.**

806 AdC 23/61, 364-366: A. Bride: Messe de binage le soir en faveur d'une communauté religieuse. (Reply.)

Q. An isolated community of thirty nuns has no chaplain, and cannot have weekday Mass unless a neighbouring priest is allowed to binate and say an evening Mass there. Is this possible? R. There is every chance of a favourable indult from S.C.C. or preferably S.C. Relig. to allow week-day bination in such a case, and in fact PdC 9/61, 510 contains an indult for a similar case in Italy. As for an evening Mass, this is within the powers of the Ordinary to grant. B. maintains that the use of the phrase "postmeridianis horis" in *Sacram Communionem* (as distinct from "vespertinis horis" of *Christus Dominus*) means that the Ordinary can authorize Mass before 4 p.m. and after 9 p.m.

806 § 1 PdC 9/61, 510: Bonaventura da Gangi, O.F.M.Cap.: Binazione feriale nelle comunità religiose. (Reply.)

The superior has obtained an indult permitting bination even on weekdays, so as to guarantee daily Mass for her community. The indult contains the phrase: "pro diebus in quibus Missae auditio aliter impossibilis evadat." There are several priests who could serve this convent without needing to binate but are not prepared to do so because the convent is poor and offers no salary. The rector of local church may lawfully make use of the indult.

806 § 1 HPR 2/61, 489-490: C. L. Parres, C.M.: Week Day Bination for Funerals and Weddings: Mass Stipends. (Reply.)

If on a weekday a priest has arranged to say a Mass for a stipend and then finds that he must binate (in virtue of an indult) for a wedding or funeral, is he obliged to reschedule the scheduled Mass? Some suggestions: A funeral or wedding Mass need not necessarily be said for the persons concerned, though C. finds it hard to believe that there is not an implicit request for the Mass. Indults have been obtained allowing two stipends on weekdays provided one is sent to the bishop for some pious use. If it is not easy to reschedule the first Mass then perhaps those concerned could be told not to give a Mass stipend and that the Mass will be offered in charity, or again without telling them the Mass could be said in charity and on another day a Mass could be offered in justice for the stipend.

- 806 § 2 AfER I/61, 23: E. de Bekker, W.F.: Bination, number present. (Reply.)**

Where a priest has been granted habitual permission by the Ordinary to binate for those who are normally present in sufficient number, he may still say the second Mass in the exceptional cases where only a few turn up.

- 807 AfER II/61, 97: E. de Bekker, W.F.: Mass in the state of grace. (Reply.)**

Only where a confessor cannot be had and there is a necessity of saying Mass is a priest excused from the grave precept of cn 856, and, having made an act of perfect contrition, he may say Mass. But when a priest has said Mass in such circumstances, he must confess the grave matter within three days after the circumstances have ceased to exist. B. discusses when those circumstances are present, which would allow a priest to say Mass without first confessing whatever grave sin he may have committed.

- 808 AdC 20/61, 310-312: A. Bride: Messe, Communion et jeûne eucharistique. (Reply.)**

B. deals with the problem of priests who say two or three Masses on a Sunday, who receive little or no benefit from *Sacram Communionem*. He states that this matter is mentioned in numerous vota sent to Rome for the coming Council, and mentions (without specifying) that indulgences have been granted to relieve priests in this situation. He particularly warns against any tendency, all too evident in some quarters, of anticipating the Council's decisions by taking food or drink in flat contradiction to the law now in force.

- 819 CR 4/61, 193-210: English in the Liturgy: A Report by The Vernacular Society of Great Britain. (Article.)**

A study of the results of a questionnaire which was put to the clergy of the diocese of Portsmouth regarding the use of English in the Mass and Divine Office. The combined results for all priests, secular and regular, show that 52% favour some use of English at Mass, 61% favour some use of English in the Holy Week liturgy, 56% oppose private recitation of Divine Office in English.

- 821 ST 5/61, 308-309: E. F. Regatillo: Hora de la celebración de la Misa. (Reply.)**

May a priest, not able to say Mass in the morning because of travel or a journey, say Mass in the evening with no more

necessity than mere devotion? R. says he should follow the prescriptions of cn 821 § 1 but using legal time, if he so wishes. The bishop cannot dispense in this matter except where he allows an evening Mass for the benefit of the people. Moralists and canonists would permit priests to celebrate Mass an hour before or after the times stated in the canon.

821 HPR 3/61, 597: C. L. Parres, C.M.: Latest Time for Evening Mass. (Reply.)

Neither *Christus Dominus* nor *Sacram Communionem* indicates the latest hour at which evening Mass should begin. It would seem that it should at least begin at such a time that it will be finished before midnight. It is within the power of the local Ordinary to make restrictions regarding the time of evening Mass.

821 CM 1/61, 26: Time of celebration of Mass. (Indult.)

S.C.S.O. 10/11/60 granted the following faculty to the Archdiocese of Bombay: Missam celebrandi horis post-meridianis, quando in itinere ratione ministerii vel alia rationabili causa suscepto, mane convenienter litari non potuit. The same indult had been granted to the Ordinaries of Burma, 13/3/59.

821 § 1 AfER I/61, 23: E. de Bekker, W.F.: Evening Mass. (Reply.)

A missionary postpones his daily Mass in order to say it in the evening at an outstation. Rain makes the journey impossible. He may say an evening Mass at home.

822 § 4 CM 5/61, 192: F. Timmermans, S.J.: Use of the privilege of portable altar outside one's diocese. (Reply.)

May a priest outside his own diocese use the faculty he has received from his own Ordinary to say Mass on a portable altar and sub dio, and if so, does he require for the licit use of the faculty the permission of the Ordinary of the place where he intends to use this privilege?

R. A private answer of Propaganda states that a priest may use this faculty outside his own diocese as long as he is in the territories which are subject to the S.C., but in order to do this he needs the permission, at least legitimately presumed, of the Ordinary of the place where he actually celebrates.

- 824 SMR I/60, 95; II/60, 128: J. Demers: L'honoraire de grand-messe dans l'économie de la paroisse canadienne. (Article.)**

A long examination of the canon and civil law concerning the stipend for High Masses in French Canada. The High Mass has a peculiar place in the parochial organism, and the stipend for it serves a threefold purpose. It comprises, firstly, the honorarium due to the celebrant, which D. considers too low at the present time; secondly, a sum due to the parish priest, accorded to him by both civil and canon law; and thirdly, a proportion due to the church fabric, likewise determined by canon and civil law. It follows that the celebrant has no right to appropriate the entire stipend of such a Mass.

- 845 § 2 ST 5/61, 307-308: E. F. Regatillo: Administración de la comunión por un Diacono. (Reply.)**

A deacon should not distribute Holy Communion without a grave cause. But the desire to give Holy Communion to his parents and relatives after his ordination, or the anxiety to give a nephew or niece their first Holy Communion would be a sufficiently grave cause. Should he give Holy Communion without the grave cause and without permission he would not be irregular since he was ordained to distribute Communion in certain circumstances.

- 853 AfER II/61, 90: E. de Bekker, W.F.: Refusal of the Sacra-
855 ments. (Casus.)**

Cf. cn 886, below.

- 855 CR 3/61, 170-174: L. L. McReavy: Sundry Sacramental Questions from a Missionary. (Reply.)**

Apart from applying the rule of cn 855 to those known to be in grave sin, a missionary cannot, properly speaking, "punish" defaulters by exclusion from the Sacraments. The institution and imposition of canonical penalties is limited by cn 2220 to those who have legislative jurisdiction in the external forum.

- 856 AfER II/61, 97: E. de Bekker, W.F.: Mass in the state of grace. (Reply.)**

Cf. cn 807, above.

- 858 CR 3/61, 168-170: L. L. McReavy: The Notion of Infirmary in Relation to the Eucharistic Fast. (Reply.)**

Even though *Sacram Communionem* does not, like *Christus Dominus*, limit the special provision, made for the infirm, to those whose infirmity entails a grave inconvenience in observing the normal fast, the infirmity must still be such as affects one's fitness to fast. Lameness and deafness are infirmities, but not in the sense of this law.

- 858 CR 3/61, 170-174: L. L. McReavy: Sundry Sacramental Questions from a Missionary. (Reply.)**

A multi-vitamin tablet, taken as a remedy for an infirmity, is commonly considered to be a medicine and therefore does not break the fast.

- 858 § 1 ST 2/61, 109-110: E. F. Regatillo: Ayuno eucarístico para los enfermos. (Reply.)**

Can a sick person take as medicine solid food prescribed by the doctor and still go to Holy Communion? R. He can take any non-alcoholic drink or solid or liquid medicine up to any time before Communion. In a *Motu Proprio* of March 19, 1957, Pius XII said that medicine could be taken even if it contained alcohol. But solid food, *e.g.*, a chop, does not become medicine because it is prescribed by a doctor. Hence a sick person may not take solid food every three hours as ordered by the doctor and still go to Holy Communion. He should apply for a dispensation from the S.C.S. in order to take solid food up to an hour before Communion, stating the nature of his illness, the prescriptions of the doctor, his great desire to receive the Eucharist, including a medical certificate from his doctor. This application is made through the bishop who adds a letter of recommendation, if he thinks the case warrants such.

- 858 § 2 CM 4/61, 145-147: Anon.: Solid food and true medicine. (Reply.)**

The anonymous author considers solid food can never be regarded as "*vera et propria medicina*" with relation to the Eucharistic fast. He quotes CR 10/57, 599 (Dr Kelly) and *Revue diocésaine de Namur* January 1958 for the contrary opinion.

867 § 4 CM 4/61, 148-149: Anon.: Priest taking Communion in the evening. (Reply.)

A priest travelled all night and the following day to 5 p.m. He then went to the church and gave himself Communion. The recent faculties re Communion in the evening have not abrogated the clause in cn 867 § 4 "nisi aliud rationabilis causa suadeat." The priest had a reasonable motive for receiving Communion in the afternoon. If he could reasonably have asked another priest to give him Communion he should have done so. Otherwise he should have taken care that the faithful did not get upset about it.

867 § 4 RDT 3/61, 139-147: N. Vilain: La distribution de la Sainte Communion l'après-midi. (Article.)

By decree of S.C.S.O. of 21/3/60, local Ordinaries may permit the distribution of Holy Communion in the afternoon or in the evening, on the occasion of a pious exercise, if there is no evening Mass. This concession does not abrogate the final clause of cn 867 § 4, contrary to the opinion of A.-G. Martimort in *La Maison-Dieu*, n°62 (2nd trim. 1960), 123-129. It is still allowed to distribute Holy Communion in the afternoon or in the evening, on a reasonable ground, without connection with an evening Mass or a pious exercise.

869 CM 4/61, 147-148: C.M.: Communion of Nurses. (Reply.)

May a Catholic nurse on duty with the sick, receive Communion in the ward or the sick room? R. The Ordinary has no power to grant such a permission. C.M. considers that if the nurse cannot leave the ward or the sick room to go and receive Communion in a place where either by law or indult it may be given to healthy persons, we might use epikeia. Mgr. Jorio (*La Communion des Malades*, 1933, n. 49) writes, "... it seems to us that we may give a benign interpretation to the law and administer Holy Communion to the nurse in the sick room." Similarly Vermeersch, *Periodica* 1928, p. 27.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. IV:
DE POENITENTIA**

871ff CR 1/61, 10-27 and 2/61, 85-98: F. Courtney, S.J.: *The administration of Penance.* (Article.)

Cf. above, General and Historical subjects, p. 6.

872 L I/61, 3: Fr. Renatus, O.F.M.Cap.: *De natura potestatis remittendi peccata.* (Article.)

The principal effect of the Sacrament of Penance, the remission of sins, is attained directly and ab intrinseco by the power of jurisdiction. This is implied in cns 870 (where judicial absolution is an act of jurisdiction) and 876. The function of the power of Order in this matter is to endow the minister with the capacity to receive the necessary jurisdiction. R. supports his opinion with a good deal of patristic testimony.

874 Per II/61, 160: U. Navarrete, S.J.: *De jurisdictione ad audiendas confessiones juxta constitutiones Primae Romanae Synodi.* (Commentary.)

All priests who now come to live in Rome for at least a year are bound to apply to the Vicariate for faculties for Confessions, and all (with some exceptions) must undergo examination. But the following faculties are ipso jure granted: Priests on pilgrimage may hear confessions of fellow pilgrims; clerics with ordinary jurisdiction elsewhere may hear confessions of non-subjects who present themselves while subjects' confessions are being heard; any priest may be absolved by any other priest, even by one who holds no faculties provided he is not under censure or irregularity; with certain limitations Major Superiors of religious can give their subjects jurisdiction to hear confessions of non-subjects. These faculties are valid only for the Roman diocese.

874 § 1 AdC 25/61, 396-7: A. Bride: *Pouvoirs d'un confesseur.* (Reply.)

Q. An exempt religious has received faculties to hear all penitents from the local Ordinary, but permission to hear men only from his own superiors. R. He can absolve validly. For lawfulness, he must decide whether he has the "licentia saltem praesumpta sui Superioris," or whether his superior's positive will was to withdraw this permission in the case of women. If he knows the latter is the case, he acts unlawfully.

- 874 § 1 CME II/61, 142-151: C. Eykens: Speciale gevallen van biechtjurisdiktie. (Article.)**

Cf. cn 520, above.

- 877 § 2 Per II/61, 160: U. Navarrete, S.J.: De jurisdictione ad audiendas confessiones juxta constitutiones Primae Romanae Synodi. (Commentary.)**

Cf. cn 874, above.

N.B.—Any priest who has passed the examination of the Roman Vicariate may not be compelled by any other Ordinary to undergo an examination for faculties. Nevertheless § 2 of this cn remains in force.

- 883 AdC 7/61, 105-111: A. Bride: Pouvoirs de confesser pendant les voyages. (Reply.)**

B. takes occasion of some rather childish queries to give a long exposition of the doctrine of the need for jurisdiction for valid and lawful absolution, and the penalties incurred without it. B. holds that a priest who validly absolves in virtue of common error, but without sufficient reason, does not incur the penalty of cn 2366.

- 886 AfER II/61, 90: E. de Bekker, W.F.: Refusal of the Sacraments. (Casus.)**

A public sinner cannot be excluded from the confessional and, if there is no grave reason to doubt that he is properly disposed, he must be absolved. If there is grave reason to doubt his dispositions, the confessor is not obliged to absolve unless there is urgent need to do so. Even in the case of grave restitution, absolution must not be refused unless there are serious doubts that the penitent will fulfil his grave obligation. If the penitent can do nothing to remove the harm done, absolution cannot be refused; and if a public penance is imposed, cns 853 and 855 forbid refusal of the Sacraments until it is accomplished.

By cn 853 any baptized person, unless excluded by law (cn 855), must be admitted to Holy Communion. Thus public sinners who are publicly known to have retracted their sin cannot be refused Holy Communion.

- 887 CR 3/61, 170-174: L. L. McReavy: Sundry Sacramental Questions from a Missionary. (Reply.)**

Illiterate penitents are not exempt from the law of proportionate penance by the mere fact that they are unable to memorize fixed forms of prayer. A grave penance need not consist of prayers.

- 901 AdC 12/61, 188: M. Huftier: Sacrement de Pénitence sans confession. (Reply.)**

Before hearing children's confessions, the priest assembles them, makes a general examination of conscience, and excites them to contrition. Then without any accusation of sins he absolves each one individually. H. replies that such a practice can have no justification.

- 901 CR 2/61, 106-108: L. L. McReavy: Confession in the Reception of a Convert. (Reply.)**

The practice of giving sacramental absolution to a convert before he has been conditionally baptized, or (if he has certainly been baptized) before he has been absolved from censure is an abuse which must be corrected. The effect of such an absolution will depend on the validity of the convert's previous Baptism and his good faith in receiving the Sacrament of Penance prematurely.

- 924 § 2 HPR 6/61, 909-910: C. L. Parres, C.M.: Apostolic Indulgences and Rosaries. (Reply.)**

1. List of the Apostolic Indulgences that can be gained by one using a specially blessed rosary.

2. Possession of such a rosary can be transferred (but not by sale) without loss of indulgence. It should be noted that the rosary must be kept on one's person or in a becoming place at home.

- 928 § 1 AdC 6/61, 93-94: A. Bride: Indulgences et croix bénites. (Reply.)**

The faculty to bless a crucifix with a plenary indulgence "toties quoties" means that any one of the faithful using the crucifix may gain a plenary indulgence in articulo mortis. A decree of S.C.S.O., 10/6/1914, stating this, excludes any wider interpretation (*e.g.*, each time the crucifix is kissed) no matter how the faculty was obtained. B. holds that this decree applies to crucifixes already indulgenced by one claiming wider powers.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. V:
DE EXTREMA UNCTIONE**

940 AdC 13/61, 193-198: J. C. Didier: L'onction des malades.
(Article.)

D. discusses at length the nature of the Sacrament and the condition of infirmity required for its reception, its effects and the order in which the last Sacraments should be received.

940 § 2 AfER I/61, 24: E. de Bekker, W.F.: The Last Sacraments.
(Reply.)

Without previously absolving her, Fr. X gave Extreme Unction and the Papal Blessing to an unconscious woman. Two days later she recovered consciousness, so he heard her confession and gave her Viaticum. He thought she was on the way to complete recovery, but she died. He wonders if he should not have conditionally repeated Extreme Unction and the Blessing.

Reply: In the same danger of death you cannot validly repeat Extreme Unction or the Papal Blessing. In the first instance, however, Fr. X should have conditionally absolved her before anointing her.

947 § 1 HPR 6/61, 910-914: C. L. Parres, C.M.: Extreme Unction in Plural. (Reply.)

The Roman Ritual makes provision for reciting the prayers which precede and follow the anointings in the plural. Anointings must be done individually where a number are receiving Extreme Unction at the same time. No special reason is needed for this procedure. The Apostolic Blessing may be given in the plural too if several are to receive it at the same time.

**LIBER III, PARS I: DE SACRAMENTIS: TIT. VI:
DE ORDINE**

- 948 ZSS 1960, 112-134: H. Barion: Ordo und regimen fidelium. (Article.)**

An examination of the apparent disagreement between cn 948 on the one hand, with its attachment of fidelium regimen to the Sacrament of Order, and the dualism of cns 108 § 3 and 109. B. finds that the words "ad fidelium regimen" are without support in the Fontes, but refutes the thesis of Rudolph Sohm, that there is here a hiatus between the old law and the Code, by showing that the connection between regimen fidelium and Order is to be found in Gratian, in a passage overlooked by Sohm.

- 949 NRT 4/61, 337-366: P. Winniger and J. Hornef: Le renouveau du diaconat. Situation présente de la controverse. (Article.)**

An attempt to assess the considerable movement towards a renewal of the Diaconate as a separate order in the Church. The authors discuss the problem of celibacy, and conclude that there is no insuperable objection to married deacons. They show the advantages that would accrue in the field of the lay apostolate, and the need for such an institution in various parts of the world, not least in South America.

- 949 MD II/61, 111-125: Vincent Lecomte, O.P.: Où en est le diaconat? Note sur le diaconat dans l'Eglise chaldéenne d'aujourd'hui. (Article.)**

Despite its title, this article is really about the sub-diaconate. In the Chaldean Church, which is one of the Catholic branches of the Syrian or Antiochene rite, the ordination of deacons who are not to go on to the priesthood but to remain in that order has practically ceased. But until 1949 many permanent subdeacons were ordained so that, even now, a good number are to be found in most parishes. On Sundays and feasts they have a major role at Mass and the public celebration of the Office. They help the celebrant at Mass on weekdays also and they have a part in the administration of the Sacraments, at funerals and in the rites of Holy Week. They are married laymen, farmers, traders and the like. A number of factors have led to the dearth of further candidates to this office but the chief is that the subdiaconate, while not a major order, is a diriment impediment to marriage in the new Code of Canon Law for the Oriental Churches, cn 70. In a few

years the permanent subdeacons will have disappeared and with them the solemn celebration of the Divine Office in Chaldean churches. The training of laymen to fulfil some of their functions is only a partial remedy. In view of the traditions of the oriental churches and the contemporary rethinking of the question of the diaconate, is it unreasonable to hope for some reform in the law? As matters stand at present, those who might present themselves for the subdiaconate are either bachelors unwilling to undertake celibacy for the rest of their days, or married men, many with large families, who, should they become widowers, might want to remarry for the sake of their children.

955 AdC 4/61, 49-52: A. Bride: Un prêtre a-t-il le droit de revenir à son diocèse d'origine? (Reply.)

A cleric is forced by war to leave his own diocese. He studies in another diocese and is ordained there on condition that he may return to his diocese of origin after ten year's work in his adopted diocese. After 10 years he asks the new bishop for permission to return, but is refused. B. doubts the validity of his incardination into the diocese of adoption, because there seems to be neither origin nor domicile, nor any dimissorials issued by the bishop of origin. Moreover temporary incardination seems to be invalid (cf. cn 112). Even granting valid incardination, a simple promise made by the bishop would be binding on his successor unless overridden by a more serious obligation. If however agreement could not be reached, the case should be referred to S.C.C.

968 § 1 ST 5/61, 199-209: A. Santos: La Vocación sacerdotal. Discusiones Modernas. (Article.)

S. discusses the various theories of vocation as consisting either in an internal call or feeling, or in suitability or right intention or the call of the bishop; and holds that the doctrine of Pius XI as given in the Encyclical on the Priesthood is the only true doctrine, completing the rather deficient theory of Lahitton.

968 § 1 IC I/61, 85-134: J. M. Regalado: El "vir" sujeto de la Ordenación Sacerdotal. (Article.)

After describing the various forms of intersexuality, R. summarizes the traditional teaching concerning people in these states as subjects of valid and licit ordination. He then describes how cn 968 § 1 should be interpreted in light of most modern teaching.

968 § 2 ST 3/61, 177: E. F. Regatillo: Validez de la ordinación del irregular. (Reply.)

An irregularity is a prohibitive impediment to the reception or exercise of orders. The Church cannot establish diriment impediments to the Sacraments, except of course to that of Matrimony which is a natural contract elevated by Christ to the dignity of a Sacrament. She could establish diriment impediments to the orders which are not Sacraments, but she does not do so.

984, 3° ST 2/61, 113-114: E. F. Regatillo: Irregularidad por epilepsia. (Reply.)

Theophilus in 1950 has two fits, apparently epileptic, but denied to be such by the doctor who declared there was no epilepsy in the family, and the fits showed no true epileptic syndrome. There had been no more "fits" for many years owing to a certain drug he prescribed to be taken in small quantities.

A dispensation *in cautelam* was asked for from the S.C.S. who asked for a medical certificate and then granted the dispensation for minor orders only. When later asked for a dispensation for the subdiaconate, the S.C. said it would grant the dispensation with this qualification, "providing that Theophilus has six months without the drug before ordination to the diaconate, and has recourse to the S.C. with a medical certificate."

Theophilus stopped taking the drug, whereupon he had another "fit" attributed by the doctor to the sudden cessation and withdrawal of the drug. T. resumed the drug but reduced the doses by half, and was then free from "fits" for two years and four months. He asked for his dispensation, but the S.C. said: "Defer." It is now two and a half years since he was ordained subdeacon; seven months since he reduced the quantity of the drug and since his last "fit." He is normal in studies and in work and is a good and worthy candidate for the priesthood. But Rome does not reply to questions. May the authorities proceed to ordain T. deacon? The answer is certainly not. The Holy See is severe in anything like mental or nervous disease. The meaning of the "Defer!" is "Do not ordain!"

984, 3° TS II/61, 209-227: T. J. O'Donnell, S.J.: Epilepsy in Canon 984 and Modern Medical Therapy. (Article.)

Those who are or have been epileptics are irregular "ex defectu" for sacred orders. The medical history of epilepsy is given and from the clinical picture of modern therapy it can

be said that a high percentage of cases can be controlled by drugs. Medically there is little to prevent the sufferer from leading a normal life, though some civil codes have restrictions on car drivers. It is then explained why in the canon epilepsy is listed with afflictions which are predominantly psychological and for which the irregularity persists even after the disorder has ceased. This is in contrast with the temporary status of the irregularity due to the physiological defects of 2°. The practical conclusions given are firstly, that if epilepsy had existed before the age of puberty and if at the time due for orders medical opinion states that it has entirely disappeared, then many canonists consider no irregularity exists; secondly, in other cases, providing there has been a seizure-free period and there is competent medical advice and control, application could be safely made for a dispensation from the irregularity of an epileptic who wants to become a priest.

LIBER III, PARS I: DE SACRAMENTIS: TIT. VII: DE MATRIMONIO

1012 IC I/61, 135-175: J. Hervada: El matrimonio "in facto esse" su estructura jurídica. (Article.)

Most modern authors accept that the essence of marriage in facto is the "vinculum" and that the "vinculum" is the "ius in corpus." According to H. marriage in facto esse consists of a principal juridical relationship of which the "ius in corpus" is only one element—others being, e.g., ius-debitum ad communionem vitae coniugalís, ius-debitum non faciendi aliquid contra prolem, etc.—and secondary or derived juridical relationships, e.g., the economic relationship between the parties; the rights of the children to be brought up in the family and to be educated therein and the consequent obligations of the parents.

1015 § 1 ME I/61, 79-117: X. Ochoa: Sensus Celebrationis Coram Ecclesia in Matrimonio Putativo Canonico. (Article.)

Marriage is celebrated *coram Ecclesia*: (1) when it is contracted in correct canonical form whether ordinary or extraordinary; (2) when contracted with invalid canonical form either because the extraordinary form was used in an ordinary case, or because the ordinary or extraordinary form lacked

some element necessary for its validity; (3) when the form has been omitted by legitimate dispensation; (4) when the form is omitted because of an invalid dispensation from the form; (5) when contracted without the form and without a dispensation if the following conditions are simultaneously verified: if at least one of the parties sincerely wished to contract marriage *coram Ecclesia*; if at least one of the parties went through all the preliminaries of marriage, the pre-nuptial enquiry, banns, letter of freedom, etc., so that all was prepared for the marriage; if the omission of the form was not imputable to either party; if the marriage was celebrated publicly.

O. concludes that marriage is celebrated *coram Ecclesia* as often as it is certain that at least one of the parties has a positive intention, externally manifested, of contracting a canonical marriage, and everything required by the law had been posited either before, during or after the marriage, although in fact the canonical form was omitted or invalidly performed through the will of one of the parties but in a manner that was not imputable morally.

1016 ADC IV/60, 581: A. Bertolazzi: Alcune Osservazioni circa la pretesa competenza territoriale dei ministri dei culti ammessi nello stato. (Article.)

The competence of a minister of religion to celebrate a marriage outside his determined territory. He is recognised by the State . . . the marriages carry the civil effects. But that does not mean that the State gives him personal jurisdiction to perform marriages other than in the territory approved.

1028 HPR 4/61, 705-710: C. L. Parres, C.M.: Dispensation from Banns: Proper Ordinary. (Reply.)

In parts of the U.S.A. summer migrant workers from the same diocese spend 2/3 months in dioceses other than their own. In these dioceses they are not *vagi*, so the pastor where they reside can validly and lawfully assist at their marriages, but his Ordinary cannot dispense from the banns. What is to be done, especially when dealing with invalid marriages, when a dispensation from the banns is desired? First of all the pastor need not wait until the month's residence is complete before beginning his investigation into the freedom of the parties. He may therefore have time to send the results of his enquiries to the Ordinary of domicile and obtain a dispensation from the banns from him. A more practical solution to this difficulty would be for the Ordinary of domicile to grant the chancellor of the diocese of migration faculties to

dispense from the banns in such cases. Another solution would be for the Ordinary of the place of marriage (or even the pastor) to declare that there exists a cause excusing from the publication of the banns provided he is satisfied that the parties are free to marry.

1039 § 1 REB II/61, 461-462: P. L. Lara, C.SS.R.: Poder do Ordinário local de proibir matrimônio. (Reply.)

Can a local Ordinary forbid a marriage in the case where the parties are of canonical age to marry but are under age civilly? The local Ordinary has no legislative power respecting matrimonial impediments (cn 1038 § 2.) In virtue of cn 1039 § 1 he can forbid a marriage in a particular case, temporarily, for as long as a just cause exists. This prohibition is only "ad liceitatem." In the case envisaged the local Ordinary can, even by general decree for his diocese, prohibit assistance at a marriage which cannot be accompanied by a civil contract, without previous recourse to him. After such recourse in each case he can forbid the marriage "ad tempus" provided and in so far as there are just reasons for the civil prohibition.

1044 HPR 1/61, 386-392: C. L. Parres, C.M.: Marriage in Danger of Death: Dispensation by Pastor outside of Territory. (Reply.)

In the conditions mentioned in cn 1044 a pastor, whose subject is in danger of death in another parish, may dispense him from the impediment of mixed religion or disparity of cult and even from the form of marriage, but he cannot in virtue of his ordinary power assist at his marriage. With regard to this there are a number of possibilities. If the pastor of the place is available he could call him to assist or get delegation from him. He could also dispense from the form and allow the parties to marry in his presence. It is possible that he could assist according to the norm of cn 1098, making use of the extraordinary form in danger of death.

1045 IER 6/61, 409: T. Cunningham: Omnia Parata case: Dispensation from a simple vow. (Reply.)

Although a P.P.'s action in dispensing from the impediment of a simple vow not to marry in virtue of cn 1045 is in accordance with the teaching of authors, the theoretical justification of the teaching presents some difficulty because a vow not to marry prohibits marriage by divine law, yet the concession of cn 1045 is limited to prohibitions of ecclesiastical law. What is the canonical basis of the practical procedure?

One solution (Vlaming-Bender et al.) is that, in the cir-

cumstances of cns 1043-1045, the law grants power to the authorities there mentioned to dispense from vows and with the removal of the vow the matrimonial impediment automatically ceases. But the text of the law does not seem to give any support to this solution. Another proposed solution (Cloran) is that cns 1043-1045 give power to dispense from the *impediment* of a simple vow *in ordine ad matrimonium*. This dispensation thus does not abolish the vow, but has the effect that the vow no longer prohibits the marriage. C. prefers this explanation as being in fuller accord with the text of cns 1043-1045, where no power over vows is granted, and with the formula of the quinquennial faculties by which Ordinaries are given delegation to dispense from the impediment impediments of simple vows *ad effectum tantum matrimonium contrahendi*.

1061 § 1 ACR II/61, 149-154: G. C. Gallen: Promise of Catholic education of children of a mixed marriage. (Reply.)

Does a promise of Baptism and Catholic education positively include the obligation to send children to a Catholic school? The promise is to be understood as implying the obligation to send the children to a Catholic school if such is available. The fact that this may become subsequently impossible or gravely inconvenient need not enter into consideration when the promise is made. If at the time of the promise there is an evident intention to send the children to a non-Catholic school, whether a Catholic school is available or not, but otherwise to permit them to be brought up as Catholics, it might still be possible that the local Ordinary would grant the dispensation for the marriage. For it is possible to have a Catholic education without attendance at a Catholic school, but it would be for the local Ordinary to judge.

1065 HPR 1/61, 384-386: C. L. Parres, C.M.: Marriage of a Catholic to a Mason. Is Dispensation from Mixed Religion Required? (Reply.)

If a Catholic girl wishes to marry a lapsed Catholic who has joined the Masons, but has not joined a schismatic or heretical sect, her marriage is governed by cn 1065. Though not a mixed marriage it is practically equivalent to one. Guarantees are required (though not necessarily in writing); a grave cause is needed and the permission of the Ordinary must be obtained. Had the boy joined one of these sects as well as becoming a Mason the marriage would be a mixed marriage and a dispensation from the impediment of mixed religion would be required.

- 1066 AfER II/61, 99: E. de Bekker, W.F.: Marriage of public sinners. (Reply.)**

The pastor should not assist at the marriage of a public sinner without a grave cause for doing so. The Ordinary should be the judge in this respect and his permission should normally be asked. As a rule, the marriage ought to be celebrated in the parish church, but the use of the sacred rites, nuptial Mass, and solemn blessing should be forbidden.

- 1067 § 1 AfER I/61, 19: E. de Bekker, W.F.: Declaration of Nullity. (Casus.)**

Cf. cn 1069 § 2, below.

- 1068 ST 6/61, 364-365: E. F. Regatillo: Procedimiento en caso de Matrimonio nulo por impotencia. (Reply.)**

If the wife is fairly certain that her husband is impotent she should try and get the man examined by two doctors who may certify that the man's impotency is antecedent and perpetual and easy to prove in judicial form. The wife could then present her plea for nullity.

If the husband will not be examined or the doctors cannot determine clearly his impotency, then the wife can submit herself to a medical examination by two doctors who will testify in writing if they find she is a *virgo intacta*. Then she should communicate to the bishop her intention of asking for a dispensation *super rato*, and then things should pursue their normal course.

- 1068 ME I/61, 27-50: Rotal Sentence, 18/12/1957: Coram Mat- tioli: Conditional Consent and Impotence.**

Maria Theresa was betrothed to Emmanuel, a dentist, in 1934. The courtship pursued an uneven course for four years. Anxious to have a family, she had herself examined medically many times and was always pronounced normal. She begged Emmanuel to go through a similar medical examination. He refused. The marriage contracted in 1940, remained sterile for five years. Maria Theresa again had herself medically examined and was again told she was normal. She insisted that E. be examined. The doctors said he was incapable of begetting children. Maria Theresa left him and brought in a suit of nullity in 1945 on the grounds of conditional consent and impotency, because he had no true semen. The case tried in first instance by the Rota in 1954 produced a negative sentence on both pleas. An appeal brought another negative sentence that same year. A further appeal based on im-

potency was again negative. But again M.T. appealed for a new hearing which was granted by the Rota on March 28, 1957, and a rider was added in regard to possible non-consummation of the marriage. The sentence was that the marriage was null because of conditional consent. They pronounced the man impotent, not just because he lacked spermatozoa, but because of disease and they also declared that the marriage had never been consummated.

1069 ME II/61, 292-298: L. Bender: Matrimonii Convalidatio et Haeresis Abiuratio. (Case.)

Candida, born of Anglican parents, was baptised by an Anglican minister. When 22 years of age she married Alexander who was not baptized. Her married life was wretched, so she divorced Alexander and went to live in Italy. Anthony fell in love with her. She told him of her troubled matrimonial life, and together they went to the parish priest who declared C's marriage with Alexander, being a marriage between a baptized and a non-baptized person, as completely invalid. The parish priest obtained from the bishop a dispensation for a mixed marriage. Later after two sons had been born C. went under instruction with Hubert another priest who concluded that she and Anthony were not truly married, though they were in perfectly good faith. C. insisted on an early reception. So Hubert applied for leave to receive C., to absolve her from all sins and censures, so that she could go to the Sacraments as she so ardently wished to do, and he promised the bishop that he would do all in his power to convalidate the marriage. The bishop replied that C. could not be received into the Church until her marriage with Anthony had been convalidated. *Quid ad casum?*

The marriage between C. and Alexander was valid but could be dissolved through the application of the Petrine Privilege. So recourse should be had to the Holy See. But *Roma lenta quia aeterna*, so what can Hubert do in the meantime? Bender says that since she and her husband are in perfectly good faith, she may licitly be received into the Church, for she has the requisite good dispositions. The bishop was wrong.

1069 § 2 AfER I/61, 19: E. de Bekker, W.F.: Declaration of Nullity. (Casus.)

B. outlines the several solutions possible in the case where Ruth had been married to Obediah, who subsequently left her. Both were Protestants at the time of the marriage and Ruth was certainly no more than thirteen years old. A prospective

convert, Ruth then wanted to marry Michael, a Catholic. Fr. P, parish priest, decided that the first marriage was invalid due to the impediment of age, gave the required dispensation, and assisted at the marriage of Ruth and Michael.

1081 § 1 P 4/61, 351-2: P. R. Coyle: Marriage of the Insane. (Reply.)

The Church does not encourage marriage on the part of a person afflicted with mental disability, but she insists that the right to marriage, which he has from the natural law, cannot be denied him absolutely. If he contracts marriage at a moment when he is capable of giving valid consent it must be recognised as valid.

1081 § 1 IDE II/61, part 2, 242-245: Vicariatus Urbis Tribunal Primae Instantiae, 22/12/59: Consent.

Once insanity has been established, proof that the marriage has taken place during a lucid interval does not prove the validity of the marriage, for such temporary suspensions of the illness are not always accompanied by the full use of intellect and will.

1084 AER 1/61, 23 and 2/61, 96: Paul Hilsdale, S.J.: Are Non-Catholic Marriages still Valid? (Articles.)

Eighty per cent. of couples interviewed on the eve of their marriage gave no evidence of a positive act of the will against the substance of the marriage (cn 1086 § 2). Although the majority of couples interviewed were erroneously convinced that divorce was permissible, their own matrimonial consent was not influenced by this "simple error." The traditional doctrine that simple error does not vitiate the consent is still true. Notwithstanding the above mentioned error so prevalent in the U.S.A., people still contract into a "state of matrimony" which *at least implicitly* commits them to an indissoluble union.

1086 § 1 IDE II/61, part 2, 237-239: Vicariatus Urbis Tribunal Appellationis, 11/1/61: Matrimonial Consent.

In cases tried under the heading of simulation of consent documentary proof is admissible, *e.g.*, private letters of the parties, written either before or after the marriage and containing a confession of having simulated consent or the intention to do so. But, granting the authenticity of the letters, the truth of the statement is not thereby proved. The evaluation of their worth rests with the judge. Simulation takes place precisely at that moment when consent is manifested in the

presence of a qualified witness; and from this moment the presumption of *cn* 1086 § 1 holds. This presumption cannot be overthrown except by irrefragable arguments. If doubt persists *matrimonium gaudet favore juris*.

1086 § 2 ME II/61, 217-230: Rotal Sentence, 4/12/1957: Coram Mattioli: Fear.

Paul, a Bohemian Jew, because of German persecution, accepted a teaching post at Oslo University. Over-sexed, he fornicated a number of times with Paulina a non-Catholic Norwegian girl. She told him she was pregnant, so he proposed marriage that the child might have a name and be born legitimately. He had at that time become interested in the Catholic religion and wished to be received. But Paulina confessed that many men had had her before him, and among them a German soldier. Paul almost lost his reason, for he was torn between his violent sexual attraction to Paulina and his repulsion at her whorish behaviour, and moreover was particularly repelled by the fact that she had had a German soldier as a lover and that the paternity of the child might easily and most probably be laid at his door. He could not bear to accept a German child as his own.

Paul was received into the Church in 1941. He was afraid to refuse marriage with Paulina because of the probable revenge of her father who might denounce him to the Germans as a Bohemian Jew. The child was born, but Paul had left Paulina some months before that event. He accused his marriage of nullity on the grounds of an unfulfilled condition; but a negative sentence was the result. Again in 1945 he brought in a plea of nullity on the grounds of grave fear. The Oslo Court gave a positive sentence which was reversed on appeal by the Rota in 1951. The bishop of Oslo begged the Rota to try the case again on a plea of total lack of consent occasioned by fear. A positive sentence was given towards which the utter candour of the petitioner helped not a little.

1086 § 2 IDE II/61, part 2, 239-240: Vicariatus Urbis Tribunal Primae Instantiae, 7/11/60; 30/11/60: Two cases of exclusion of *bonum prolis*.

1. It is of paramount importance to produce the motive of the exclusion of *bonum prolis*, otherwise the proof of the exclusion itself is almost impossible.

2. In proving the exclusion of *bonum prolis*, more important than the actual form in which the intention is couched, and even more important than the motive, is the post-marital conduct of the parties and the tenacity with which the determination is carried into effect.

- 1086 § 2 AER 1/61, 23 and 2/61, 96: Paul Hilsdale, S.J.: Are Non-Catholic Marriages still valid? (Article.)**
Cf. cn 1084, above.

- 1087 IDE I/61, part 2, 3-6: Rotal Sentence, 11/11/60: Coram Sabattani: Reverential Fear.**

Invalidating fear must always be *ab extrinseco*; hence it does not exist if the danger feared is from some natural or necessary cause. But, if a danger is exaggerated in order to disturb one of the parties it becomes unjust and external.

- 1087 § 1 ME II/61, 203-216: Rotal Sentence, 14/11/1957: Coram Mattioli: Duress.**

Julia, a very nervous girl, left her family and suffered many hardships and vicissitudes. A priest, John, sorry for her, got her into the J.O.C. and moved by compassion, took her into his own house, where she shared his table and his mother's bedroom. John, as far as he could, became a real father to the girl. But obviously he could not keep her indefinitely, so he tried with all his energies to find her a suitable husband. He found one, Christian, by name, and a member of the J.O.C. But Julia not only did not love C. but had a positive aversion from him. They were married in 1946 when she was twenty-six and he twenty-seven. Married life was conducted by them very unhappily for five years, when they were divorced. Julia is now living with another man. Christian asked for a declaration of nullity on the grounds that Julia was forced into the marriage by John, who had been far too anxious to get her off his hands and out of his house. At first a negative sentence was given. But in this appeal a positive sentence was given on the evidence that in point of fact John had "manufactured" so to say, this marriage between Julia and Christian.

- 1092, 4° ME II/61, 233-257: D. G. Oesterle: De Conditionibus in Re Matrimoniali. (Article.)**

A certain meeting of moralists, canonists and theologians held on April 7, 1960, asked O. to explain the doctrine of conditions in marriage, and to propose the following case for discussion and solution:

Alma, a Catholic, desired children since she considered marriage without children as failing to fulfil the end designed by the Creator. During their courtship Alma was always speaking to her fiancé about his attitude of mind in regard to children. At last he said to her: "I can't give you a child: I'm impotent." Tearfully she asked if he were truly im-

potent. He replied that he had been joking, but he had suffered from a certain disease usually contracted by young men in those parts. But Alma could not forget what he had said, so she declared to him: "I will marry you only on condition that you can make me pregnant." His reply was: "I'll give you children like a Patriarch of the Old Testament." Alma trusted his word and married him on September 3, 1957. They had intercourse frequently, but nary a sign of pregnancy, though she was more than apt at intercourse. She had herself examined by various gynaecologists who pronounced her normal. She waited until 1959 without the slightest sign of pregnancy. She then accused her marriage of nullity because of the non-fulfilment of her condition *sine qua non* according to cn 1092, 4°.

After a long discussion in which a Rotal Sentence of June 19, 1909, was quoted (R. D. Vol. I, 68-77) as favouring this case and affording a complete parallel, the marriage was declared invalid.

1094 ACR I/61, 41-48: G. C. Gallen: Non-Catholics and the Form of Marriage. (Reply.)

G. divides his answer into three parts. (1) Marriages between baptized non-Catholics: These are not bound to any external form of marriage prescribed either by canon law (through exemption), or by civil law (through lack of competency). It would certainly be advisable that they observe the form determined by civil authority, to guarantee recognition of validity and legitimacy of children. (2) Marriages between unbaptized non-Catholics: For these civil power has authority to prescribe a definite external form of marriage, to be observed under pain of invalidity. (3) Marriages baptized and unbaptized non-Catholics: G. argues that in these cases, the prescribed civil form is not necessary for validity of marriage, and gives his reasoning for such a conclusion.

1096 § 1 ST 4/61, 234: E. F. Regatillo: Delegación dada fingidamente, (Reply.)

A family invited Francis, a priest relative, to marry their daughter. Francis told them to ask the parish priest for suitable delegation. When asked the parish priest said: "Very well! Very well!" He asked for the stole fee since he was allowing their relative to perform the marriage. A few days before the marriage the parish priest asked another relative if Francis was coming to perform the ceremony. When this relative replied: "So we desire!" the parish

priest replied: "Very good! Very good!" Just before the marriage Francis told the parish priest that the documents would arrive in another car and they had better wait, to which he agreed. They waited, and then the marriage took place. After the ceremony the parish priest asked Francis who had delegated him for the marriage, and when he said that he the parish priest had done so, he declared that he had had no intention whatsoever of delegating Francis for the marriage. Was the marriage valid?

Explicit delegation can be given directly or indirectly to a definite priest. The parish priest by his words certainly delegated Francis to do the marriage. *Intentio mente, retenta nihil in humanis contractibus operatur.* The marriage was certainly valid.

1096 § 1 ST 4/61, 235-236: E. F. Regatillo: Delegación expresa. (Reply.)

Victor and Olive told John their parish priest they wished George their cousin to marry them. The parish priest agreed. George wrote to the parish priest for a written and explicit delegation, which the parish priest refused as being unnecessary. John said he would be in the church at the time of the marriage and he would say the word to George then. But when they met in the church they spoke about anything and everything else but the delegation. But John prepared everything for the marriage and saw to it that George was given a stipend for the Mass. Was this delegation explicit enough? The delegation was explicit to Victor and Olive directly when they asked for George to marry them: George was thereby given explicit delegation indirectly through the parties. This delegation was not revoked by G's request for a written delegation. John's actions just before the marriage signify explicit delegation. But it is always better to give explicit delegation in writing before any marriage, when no mistake can be made.

1096 § 1 CBG II/61, 249-266: W. Dumon: Gedelegeerde bevoegdheid tot huwelijksassistentie. (Article.)

This article is intended as a commentary on cn 1096 § 1. D. does not consider the power to perform the marriage service as a jurisdictional power; nevertheless its delegation must be regulated according to cns 196-209, as the specific norms of cns 1094-1097 are insufficient. The delegation to perform the marriage service must be given explicitly, but it can also be implicit; it is prudent and desirable that the delegation, to priests other than curates, be explicit and

written. Disputable and dubious forms of delegation are not advisable. For validity it is required that the delegate knows and accepts that he has been given the power. In order to supply a deficient power to perform the marriage service in the case of error communis, even virtualis or de jure communis, a sufficient public ground for error is required.

1097 § 2 IER 6/61, 413: P. Muldoon: Marriage Ceremonies.(Reply.)

Commentators hold that the obligation to marry before the bride's pastor is binding *sub levi*; thus a light cause will excuse from it. Reasons of utility (e.g., expense), or convenience, or even devotion seem acceptable. But the desire to have certain amenities not provided for by the *parochus sponsae* (e.g., special place in sanctuary, music, etc.) is not a sufficient reason for marrying outside the parish of the bride. But M. stresses the need for provision of such amenities as will make the reception of the Sacrament attractive.

1098 REDC III/60, 635-644: Sentence of Salamanca Diocesan Tribunal, 7/4/1959.

This is an interesting case since the sentence describes conditions prevailing in the Red zone during the Spanish Civil War. The parties had married before a magistrate, his secretary and two witnesses. The marriage was held to be valid since the only priest who had not fled was confined to his presbytery which was being used as a prison.

1099 AdC 24/61, 373-377: A. Bride: Situation canonique des acatholiques baptisés dans l'Eglise romaine. (Reply.)

B. considers at length the case of people baptized as Catholics but brought up in heresy or schism. Although bound by the canonical form of marriage, these are not subject to the law of cn 2319 because they are not "catholici" in the sense of the cn quite apart from subjectice excusing causes. The reason why such people are not subjected to cn 2319 and are subject to cn 1099 is that the two laws have different purposes. The penal law is intended to fall on Catholics who practise a certain indifferentism in religion, whereas the marriage law aims at giving to the marriage of baptized Catholics the maximum of publicity. B. then considers the vicissitudes of the law from *Tametsi* to the *Motu Proprio* of 1948, and shows that the latter will avert many of the doubts and difficulties of the law of the Code.

1099 § 1 IC I/61, 271-289: E. Lalaguna: Nulidad de matrimonio civil por confesión católica de uno de los contrayentes. (Article.)

According to Spanish civil law, an attempted civil marriage by Catholics is canonically and civilly invalid. In applying this law, the Spanish Supreme Court on October 21, 1959 stated that since Baptism confers a character, a person remains a Catholic until he "is expelled from the Catholic Church by excommunication or leaves the Church by voluntary formal apostacy." L. comments on this sentence stressing that neither excommunication nor apostacy exempts a Catholic from the obligation of observing the canonical form of Matrimony. In attempting to adopt the law of the Church, the Supreme Court has in fact departed from it.

1100 HPR 2/61, 490-492: C. L. Parres, C.M.: Votive Mass "Pro Sponsis" or Commemoration: When Permitted? (Reply.)

C. lists the rules contained in the new rubrics of the Breviary and Missal (378-381) on this point.

1102 § 2 DC 1961, No. 1345, cols. 170-171: The Marriage of Catechumens. (Reply.)

Reply of S.C.S.O., 13/6/1960, to Cardinal Feltrin of Paris (Prot. N. 4111 m/59): Faculty granted ad quinquennium for use in certain exceptional cases to permit the celebration of Mass at the marriage of a Catholic and a catechumen. The catechumen must have gone through a course of instruction at a diocesan catechetical centre but is not yet ready to be received into the church. The Mass pro sponsis can never be said nor may the nuptial blessing be given in the course of the Mass of the day. The marriage must be celebrated outside the choir and the faculty can only be used when a catechumen is prepared to give an undertaking later to be baptized.

1113 L II/61, 149: Fr. Antoninus, O.F.M.Cap.: De patria potestate in antiqua et vigenti ecclesiastica legislatione. (Article.)

A previous article dealt with the natural basis of parental authority. (Cf. CLA 6, 45). Here A. reviews ancient law and practice in the Church: e.g., the power of parents to "offer" their children to religious houses and the subsequent juridical condition of the children; consent of parents was always necessary for lawful marriage—and in some places for valid marriage. The great weight attached to parental authority in middle ages was inherited from Roman Law. A. then compares the present condition of parental authority in the Code—e.g., in matters of domicile, vows, marriage, choice of Baptism and state of life.

- 1114 IER 5/61, 337: T. Cunningham: Registry Office marriage and Legitimacy. (Reply.)**

A mixed marriage celebrated in a registry office is invalid, and therefore a child born of it can be legitimate only if it could be held that the marriage was putative. But a registry office marriage is not *celebratum coram Ecclesia*, and therefore cannot be putative whether or not one party or both were in good faith. Thus the child is illegitimate. There is no need to await a declaration of nullity by an ecclesiastical court before determining that a child of this union is illegitimate, because the law states that a sentence of nullity is not required to prove the unmarried state of a person who, although certainly bound by the canonical form of marriage, contracted a civil union merely (Instr. *Provida* 1936, art. 231 § 1). Such marriages are manifestly invalid, and moral certainty of that fact can nearly always be obtained without judicial formalities.

- 1119 IDE I/61, part 2, 6-17: Rotal Sentence, 29/2/60: Coram Mattioli: Non-consummation.**

When children have been born of a marriage it is the *stylus* of the S.C.S. to reject a plea for a dispensation on the grounds of non-consummation. Not so with the Rota. They have judged such marriages and have proved them either not consummated or invalid on the grounds of impotency.

- 1119 S.C.S.O. 12/7/1960: Private reply to V.A. of Wewak, New Guinea.**

The V.A. of Wewak petitioned for faculties to dissolve marriages "*inter partes paganas in favorem fidei, i.e., ut pars pagana, quae hic et nunc baptizari potest, matrimonium contrahere possit cum parte catholica.*" The reason given was the large numbers of cases occurring in the vicariate. The S.O. replied that the faculty was "*potestatem ita propriam Romano Pontifici ut nequeat ad alium demandari.*" (Communicated by Rev. J. Gehberger, S.V.D.)

- 1120 CM 1/61, 25-26: Indults for India.**

In a letter dated 19/11/1960, Cardinal Gracias received from S.C.S.O. the following indult: "*Permittere . . . polygamis conversis ut cum ea ex pluribus uxoribus quae cum ipsis baptizetur, renovato consensu, permaneant sine ulla interpellatione primae uxoris.*" This indult, originally granted in 1952, was withdrawn in 1959. It is now restored under the same conditions.

1120 § 2 ST 5/61, 292-302: E. F. Regatillo: Dissolutio Matrimonii in Favorem Fidei. (Article.)

Two new cases are considered: one in which a dissolution in favour of the faith was granted by John XXIII on August 1, 1959, to a non-baptised person, married to a baptised Catholic with a dispensation for disparity of cult, not willing to be a convert to the faith, in order to free him so that he could marry a Catholic, and a dispensation from the possible impediment of crime was also given; the other was given by John XXIII on August 1, 1959 in favour of the faith and of the conscience of a Catholic girl.

A baptised girl, D, was married to a non-baptised partner P. The marriage was not celebrated *coram Ecclesia*, but was recognised by the State. But the man had been married before to a Chinese girl in China. Five children had been born of the marriage between D. and P.: all were baptised and brought up as Catholics, P. allowing perfect freedom in religious matters to the wife and children, but showing his firm reluctance to embrace the faith. There was no question, therefore, of applying the Pauline Privilege. The parish priest was morally certain that neither P. nor his Chinese wife had been baptized. The marriage had taken place in the very turbulent times of the Japanese occupation when fathers were always in a hurry to get their daughters married in case the Japanese should take them. No scandal would ensue from a dissolution of this bond of natural marriage, for D. and P. had lived together for fifteen years and had been known as man and wife, very few people knowing of his marriage in China. So D. asked that her conscience might be made peaceful by having her marriage to P. put right.

A dissolution of P's marriage with the Chinese girl was granted and after a dispensation from disparity of cult had been given, D. and P. were married *coram Ecclesia*.

1127 J I/61, 124: Privilegium Fidei: Clause Praevio Baptismo in Rescripts. (Reply.)

The S.C.S.O. was asked whether the words "praevis baptismis" (or "praevis conversionibus") in rescripts granting the dissolution of a marriage in favour of the faith, are so to be understood that Baptism (alternatively, conversion) of the petitioner is required for the validity of the subsequent marriage or for lawfulness only. The S.C.S.O. replied on 14 January, 1960, that Baptism (or conversion) was required for lawfulness only. But whenever any petitioner seeks to marry, or convalidate marriage with, a Catholic, the S.C.S.O. reserves to itself the faculty of dispensing from the impediment of Mixed Religion or Disparity of Worship.

1129 IDE I/61, part 2, 18-22: Rotal Sentence, 29/11/60: Coram Fiore: Separation.

The personal separation of husband and wife is an extreme measure to be resorted to only for very grave reasons. Hence the sole reason for perpetual separation (formal consummated adultery) must be rigorously proved. A lesser reason suffices for temporary separation. The case for perpetual separation must always come before a judge even when the innocent party on his own authority ceases to live with the other. Temporary separation may be allowed administratively. If legitimate reasons for separation are lacking or have not been proved cohabitation ought to be resumed.

1133ff J I/61, 57-74: B. J. Ganter: Problems of Simple Convalidation and Sanatio in Radice. (Article.)

G. gives a detailed commentary on the occasional legislation governing the simple convalidation of marriages and sanatio in radice.

1138ff HPR 3/61, 602-604: C. L. Parres, C.M.: Sanatio Possible? (Reply.)

Is sanatio possible in the case of a marriage invalid because of previous bond and mixed religion or disparity of cult after the impediment of ligamen has ceased? The Ordinary cannot grant a sanatio, since according to cn 1139 § 2 the Church does not sanate a marriage contracted with an impediment of the divine law. That is not to say that the Church has not the power to do so. If all the other conditions for a sanatio were fulfilled the case could be presented to the Holy See and it is possible that it would be treated favourably.

1138 § 1 ST 6/61, 351-360: E. F. Regatillo: Una nueva Sanación in radice de Matrimonio. (Article.)

R. refers to an article by P. Bertrams, S.J., in Per IV/0, 6417. *De Influxu Ecclesiae in Iura Baptizatorum.* (Cf. CLA 6, 10). B. says that the Church can sanate a marriage in radice even where there is now an impediment of impotency, and this sanation not merely makes the children legitimate but heals the bond of marriage even though the impotency be present. He alleges that the Holy See has recently granted such a sanation. R. gives an exposition of the doctrine of the Code in regard to simple convalidation and sanation. He will discuss the case of the new sanation in a future article.

1139 § 1 Per I/61, 43: L. Buijs: Addenda ad commentarium in formulam facultatum decennialium. (Annotation.)

In the new Faculty N. 30 Ordinaries are empowered to grant a *sanatio* when a marriage is invalid through defective form—*e.g.*, priest assisting without necessary delegation. But if both parties are Catholic and the attempted marriage was not made *coram Ecclesia* the Ordinary cannot use this faculty. He can in some circumstances use *cns* 81 or 1043 to dispense from the form.

1139 § 2 IER 6/61, 411: T. Cunningham: Sanatio of a marriage invalid by impediment of a previous marriage. (Reply.)

Owing to the support of several noted canonists (Ciprotti, Bender), the view which attributes to the Pope power to grant full and perfect *sanationes* (*i.e.*, not only to the time of cessation of impediment (*sanatio semiplena*), but even to the beginning of the marriage) to marriages which had been invalid by impediments of the natural or divine law is at least probable. In practice, there is no record of any such fuller *sanatio*, but there are two recent cases of *sanationes semiplenae* granted by the Roman Congregations in virtue of special faculties from the Pope—the impediment being the bond of a previous marriage (*cf.* Canon Law Digest, 1959 Suppl., under *cn* 1139). The principle of *cn* 1139 § 2 is not, however, abrogated. It is still valid, not only as a general principle but also in the sense that no authority inferior to the Pope even with the usual faculties to grant *sanationes* does, in fact, have power in the cases contemplated in the canon.

LIBER III, PARS II: DE LOCIS ET TEMPORIBUS SACRIS

- 1178 CR 5/61, 302-303: H. J. Richards: Church Repositories. (Reply.)**

One cannot argue from our Lord's cleansing of the Temple (Matt. xxi, 12) that it can never be lawful to sell Catholic newspapers or even subjects of piety inside a Christian church. Excessive commercialization would incur His condemnation, but there were deeper issues than this involved in His act.

- 1178 CR 6/61, 372-373: L. L. McReavy: Should a Fixed Charge be Made for Votive Candles. (Reply.)**

Sale of votive candles in churches is only justifiable when done primarily for the convenience of the faithful. There is no obligation to state or indicate a fixed price. Indeed, it is more in keeping with the mind of the Church to eliminate the notion of a sale by leaving the re-imbursement of the cost of the candles to the generosity of the faithful.

- 1203 CR 1/61, 41-44: L. L. McReavy: The Church's Attitude to Cremation. (Reply.)**

Though cremation is not contrary to the divine law, natural or positive, or irreconcilable with Christian revelation, the Christian tradition on which the present prohibition is based has sound theological reasons behind it. It is not impossible that the Church might eventually change the law for agromonomical reasons, if and when they become really urgent.

- 1203 AdC 22/61, 351-2: Anon: De la Crémation. (Reply.)**

Q. Can a Catholic accept the post of executor to a non-Catholic who has willed to be cremated, and carry out this will? R. The author finds no Roman document on this precise point, but from an examination of the documents relevant to various aspects of cremation, he concludes that this sort of co-operation would be lawful, *secluso scandalo*, but that the proper thing to do would be to submit the matter to the judgement of the Ordinary.

- 1203 REDC III/60, 645-651: L. Portero: La Cremación de los Cadáveres ante el Derecho. (Article.)**

Recently a Spanish solicitor refused to insert in the will of a non-baptized foreign client a clause requesting that, after death, his body should be cremated. The basis of the refusal was cn 1203. Taking the opportunity provided by the case, P. discusses the traditional teaching of authors, the position of a Catholic State vis-a-vis cremation; he argues for suppression of the present canonical prohibition.

- 1204 HPR 2/61, 492-494: C. L. Parres, C.M.: Days Funeral Masses Prohibited. (Reply.)**

A list of the days on which funeral Masses may be said in accordance with the new Code of Rubrics. It would appear that the 1941 indult for the United States has been abrogated by the new Code.

- 1215 AdC 26/61, 411-415: G. Oury, O.S.B.: Les enterrements l'après-midi. (Reply.)**

The questioner wants an entirely French funeral service. O. recapitulates the binding force of the rubrics of the Ritual, and goes through the various ceremonies of the funeral rite in detail, describing exactly what must be said in Latin, and how much can be said in the vernacular. He then assesses the value of the paraliturgical prayers which are allowed by the Holy See.

- 1240 § 1, 5° CR 1/61, 41-44: L. L. McReavy: The Church's Attitude to Cremation. (Reply.)**

Cf. cn 1203, above.

- 1248 AER 5/61, 350: F. J. Connell, C.SS.R.: Servile Work on Holidays. (Reply.)**

The Church tacitly dispenses all who cannot easily abstain from work on holidays of obligation.

- 1248 AER 6/61, 398: Pius J. Lutkus, M.S.: The Definition of Servile Work. (Article.)**

History shows that custom induced the obligation to abstain from servile work. Legal custom defined and still generally defines servile work as that which involves bodily effort or which is a service. But there are exceptions. Modern reappraisals of the concept of servile work have not changed the law. Consequently the established local customs still bind in conscience.

- 1252 AdC 4/61, 57-58: E. Garrigou: Abstinence. (Reply.)**

A summary of the purpose and interpretation of the law, with particular reference to meat, gravy and soup, manufactured foods with a meat base, and lard used in making soup, all of which are forbidden. A further section treats of excusing causes and dispensation. G. finally quotes Pius XII on the need for charity.

1252 NRT 5/61, 510-521: A. Guillaume: Abstinence du vendredi et charité fraternelle. (Article.)

G. examines the thought of St Augustine, for whom fasting and abstinence was one and the same thing, a work of genuine mortification and an exercise of the virtue of poverty and charity towards the poor. He concludes that we must try to renew the spirit of true penance in our abstinence, and in particular, the true spirit of personal charity towards the poor.

1252 IER 5/61, 335: T. Cunningham: Abstinence on Ember Saturdays in Ireland. (Reply.)

In Ireland, the Ember Saturdays (outside Lent) are days of fast only, not days of partial abstinence. Those who are not obliged to fast may take meat as often as they wish on these Saturdays. This conclusion is drawn from the terms of the indult which allows meat in Ireland on the Saturdays in question and from the interpretation of this indult given by commentators. In neither instance is there mention of partial abstinence verbally or in substance, and in fact the notion and practice of partial abstinence are confined to the norms and observance of the law of fast and abstinence in the U.S.A.

1252 § 1 AER 5/61, 351: F. J. Connell, C.SS.R.: Meat on Friday in a Catholic College. (Reply.)

Mainly for the safety of the Catholic students exclusively abstinence fare should be served on Friday in Catholic colleges which have a considerable number of non-Catholic students.

1252 § 2 AER 3/61, 208: F. J. Connell, C.SS.R.: Fast and Abstinence on the Christmas Vigil. (Reply.)

By application of *epikeia* one may for a good reason separate the Christmas vigil fast from the abstinence, *e.g.*, abstaining on the 23rd though eating two big banquets and fasting on the 24th and taking meat at the principal meal!

1252 § 4 AER 3/61, 208: F. J. Connell, C.SS.R.: Fast and Abstinence on the Christmas Vigil. (Reply.)

The Decree of the S.C.C. 3/12/1959 granting the favour (not an obligation) of moving the Christmas vigil fast to the 23rd December, does not change the law. Consequently, when the vigil falls on a Sunday (*e.g.*, 1961) the obligation ceases. When the vigil falls on a Monday (1962), the fast may be anticipated on Sunday. But one may not anticipate the obligation on the Sunday and then use cn 1252 § 4 to free oneself of the obligation.

- 1252 § 4 IER 3/61, 202: T. Cunningham: Abstinence on retrenched holydays—Vermeersch's opinion. (Reply.)**

The questioner tries to invoke the authority of Vermeersch to justify non-observance of abstinence when a suppressed holiday of obligation falls on a Friday. C. shows that Vermeersch retracted an earlier opinion to that effect and in subsequent publications gave the general teaching that abstinence is only excused when the feast is actually observed as a feast of precept.

- 1254 § 2 AER 6/61, 418: F. J. Connell, C.S.S.R.: When does the obligation to fast cease? (Reply.)**

It is solidly probable that the obligation ceases not on the day after but on the day of the 59th birthday itself because a man free from fasting for part of the day cannot be bound to fast on the rest of the day.

LIBER III, PARS III: DE CULTU DIVINO

- 1258 DC 1961, No. 1347, cols. 311ff: Bernard Schultze, S.J.: The Problem of "Communicatio in sacris." (Article.)**

The author examines the question with a clear statement followed by theological principles and canonical illustrations.

- 1265 HPR 6/61, 914: C. L. Parres, C.M.: Reservation of Blessed Sacrament in Parish Convent. (Reply.)**

Cn 1265 states that it is not lawful to reserve the Blessed Sacrament in any place unless there is a priest to celebrate Mass there regularly once a week. It would therefore be unlawful to bring the Blessed Sacrament to a convent chapel once a week to provide for reservation if Mass is not said there.

- 1269 § 4 HPR 5/61, 800-801: C. L. Parres, C.M.: Key in Tabernacle Before Mass. (Reply.)**

It would seem quite unlawful to C. for a nun to put the key in the tabernacle before Mass.

1272 AfER II/61, 97: E. de Bekker, W.F.: Altar breads. (Reply.)

B. discusses the maximum time (one month) which may elapse between the baking of hosts and the consumption of the Sacred Species, the number of hosts to be consecrated, and what should be done with extra hosts—consecrated or not consecrated.

1296 § 3 F 3 and 6/61: Sacred Art. (Quarterly Supplement.)**1306 VR I/61, 38-40: Gr. M. de Antoñana, C.M.F.: Tacto de los Vasos Sagrados. (Reply.)**

Nun sacristans can touch sacred vessels and wash them, the interior as well as the exterior. They can wash corporals, etc., used at Mass after they have been first washed by a cleric in sacred orders. They cannot wash them the first time without permission from the Holy See, to be obtained by religious from the S.C. Relig.

1306 § 2 HPR 5/61, 802: C. L. Parres, C.M.: Nuns Wash Purificators. (Reply.)

There is no change in the law as given in cn 1306 § 2 and so an apostolic indult would be required to allow nuns to perform the first washing of purificators, etc. It appears that such indults have been given.

1316 CR 5/61, 301-302: H. J. Richards: The Taking of Oaths. (Reply.)

Shows how the lawfulness and even obligation of taking oaths is reconcilable with Matt. v, 34.

LIBER III, PARS IV: DE MAGISTERIO ECCLESIASTICO

- 1325 DC 1960, No. 1344, cols. 79-94: H. E. Card. Bea: Problems and Methods of Christian Unity. (Conference.)**

An analysis of the likenesses and differences between the Church and schismatic and heretical churches. "Obstacles to Christian Unity," *ibid.* cols. 93-98. (Article.)

- 1325 § 1 IER 4/61, 265: A. Doolan, O.P.: Secret Conversion: The obligation by divine law to confess the Faith: Absolute secrecy unlawful. (Reply.)**

Question: Can a priest pose as a Protestant clergyman to avoid publicity for a death-bed conversion, and can he accede to a request that the conversion be kept a dead secret for all time?

Principles: The obligation to confess the Faith is imposed by divine law, from which the Church cannot dispense, and no Catholic may shirk it. But the divine precept to confess the Faith openly (positive precept) is not as binding as the obligation never to deny the Faith (negative precept). Negative precepts bind *semper et pro semper*: positive precepts bind *semper, sed non pro semper*.

Solution: (a) Under no circumstances may one ever deny the Faith. An implicit denial of Faith is involved in the priest's conduct (simulating a false belief), and is forbidden.

(b) It may be legitimate to keep a death-bed conversion secret for some time. But, as the divine law itself is involved, no one can authorize its being kept secret for all time.

- 1327 F 4/61: Preaching. (Whole issue.)**

- 1352 REB II/61, 443-447: Bertrand de Margerie, S.J.: Técnicas Psicológicas e Ajuda Vocacional no Confessionário. (Article.)**

Some practical suggestions on the way in which priests can help to detect, foster and develop vocations whilst hearing the confessions of young people.

- 1374 CM 3/61, 109-112: F. Timmermans, S.J.: Catholics in non-Catholic Colleges. (Reply.)**

Can a 16-year old Catholic girl attend a non-Catholic (C. of E.) college in the following circumstances? There is no Catholic college within a radius of 600 miles. The Protestant college is excellent from every aspect except that all students are obliged to attend three periods a week in religion.

T. considers that if the girl is to be a boarder it is difficult to see how she could be allowed to join the college. As a day student the nature of the obligatory religious periods must be examined. If the instruction given is specifically Protestant and not just Christian moral instruction then the danger is too great and permission could hardly be given. If the latter, then provided the girl is well instructed in her faith and in contact with a properly instructed person who can guide her, the danger is minimized. Any attendance at prayers and hymn singing must be judged according to the rules of "communicatio in sacris."

1381-2 J I/61, 47-56: J. A. M. Quigley: The authority of Local Ordinary over Schools conducted by Religious. (Article.)

The control of the local Ordinary over the schools in his diocese is by no means absolute: it depends on the nature of the school. It is, however, necessary to distinguish three kinds of control by the Ordinary: (1) the right of vigilance as to faith and morals; (2) direct authority regarding religious instruction; and (3) the right of canonical visitation. Notwithstanding the apparent scope of cn 1382, some canonists maintain that in regard to schools there is an exception based on a privilege against the law. Q. investigates the claims of these canonists to see if this exception exists, and examines the privilege on which it is said to rest. He concludes that the Constitution *Romanos Pontifices* of Leo XIII subjected the parochial schools even of regulars to the visitation of the local Ordinaries, but stated the contrary in regard to their other schools and colleges.

1385 §§ 2, 3 CpR III-IV/61, 182-185: S. Goyeneche, C.M.F.: Permission to publish from Religious Superior. (Reply.)

A provincial superior wishes to publish a book written by a non-religious as an official book of the religious congregation. In this case permission of a competent local Ordinary suffices after the censorship demanded by cn 1393. But, as the question concerns the utility and advisability of publishing the book for the needs of the congregation, the provincial can, and possibly should, submit it first to the judgement of the two censors in accordance with the constitutions, but the judgement of the censors and the provincial's permission to publish need not be printed in the book.

- 1399, 9° HPR 5/61, 802-803: C. L. Parres, C.M.: Required Reading Lists in Catholic Schools. (Reply.)**

The local Ordinary has the right to prohibit books of questionable content in all Catholic schools in his diocese including those run by religious.

- 1404 IER 5/61, 333: A. Doolan, O.P.: Whether newsagents can be justified in selling pornographic papers? (Reply.)**

It is not merely by positive law, but by the Natural Law, that newsagents are forbidden to sell pornographic writings. If it were a question of merely positive law, a grave reason, like loss of livelihood, might excuse from its observance; but to do what is against the dictates of rational nature itself can never be justified. Cf. cns 1384 § 2; 1399; 1405 § 1.

LIBER III, PARS V: DE BENEFICIIS

- 1410 SMR I/60, 95; II/60, 128: J. Demers: L'honoraire de grand-messe dans l'économie de la paroisse canadienne. (Article.)**

Cf. cn 824, above.

LIBER III, PARS VI: DE BONIS ECCLESIAE TEMPORALIBUS

- 1502 ZSS 1960, 277-302: D. Lindner: Vom mittelalterlichen Zehntwesen in der Salzburger Kirchenprovinz. (Article.)**

Cf. above, General and Historical Subjects, p. 5.

- 1517 § 2 ST 4/61, 239-240: E. F. Regatillo: Fundaciones. (Reply.)**
Cf. cn 1523, below.

- 1518ff P 3/61, 251-2: P. R. Coyle: Funds of Lay Societies. (Reply.)**
Cf. cn 684, above.

- 1523 ST 4/61, 239-240: E. F. Regatillo: Fundaciones. (Reply.)**

A certain community had several funds for Masses, for candles, for oil for the sanctuary lamp. These funds are administered by a layman who is paid a salary for so doing.

They asked if they could tax the funds by so much per cent in order to cover the expenses of administration. The Holy See allows diocesan curias to tax their funds up to five per cent. This community could ask the Holy See for this permission. When it is a question of founded Masses it is always best to ask for a bigger stipend for each than for manual Masses, say, a third more, in order to cover the extra expense in handling these Masses; and the stipend ought to be fixed *pro tempore*, and the document of foundation should include permission for the bishop or the parish priest or the religious superior to reduce the number of Masses in case of the devaluation of currency or increase of taxation through no fault of the administrators. If this is done, then the number of Masses can be reduced without recourse to the Holy See or to the bishop.

1529 IDE II/61, part 1, 161-171: A. Vitale: (1) Il can. 1529 e la prova testimoniale nel processo canonico; (2) rapporti interni fra i promotori d'un istituto ecclesiastico. (Article.)

(1) A recent Rotal decision (Cf. CLA 6, 55) poses a difficulty. Cn 1529 states that usually contracts are governed by the existing territorial law. Cn 1754 allows testimonial proof, no matter what the object of the controversy. Italian civil law places some limits on testimonial proof in the matter of contracts. Should these limits, then, be observed in an ecclesiastical trial concerning contracts? The accepted doctrine and the constant Rotal jurisprudence—based on the phrase of cn 1529 “*nisi aliud jure canonico caveatur*”—indicates the applicability of cn 1754, even when civil law governs a contract.

(2) Pious foundations are a form of contract known as *do ut facias* and are governed by cn 1529, which applies to all contracts without exception. Hence, in Italy, art. 39-42 of the Italian Civil Code should be invoked to decide the relations of the members to each other.

1543 AfER II/61, 100: E. de Bekker, W. F.: High Interest. (Reply.)

Where the interest demanded is in fact insurance on the money lent, up to 30 per cent (or even more) may be asked in certain circumstances. 100 per cent is certainly excessive. If the money is to be used not for consumption, but for speculation or big business, 50 per cent, or up to one half of the profit to be made, may be asked.

LIBER IV: DE PROCESSIBUS

- 1573** ZSS 1960, 221-238: L. Carlen: Zum Officialat von Sitten im Mittelalter. (Article.)

Cf. above, General and Historical Subjects, p. 5.

- 1743-4** AdC 4/61, 52-54: M. Huftier: Un coupable doit-il se dénoncer? (Reply.)

A guilty party has per se no obligation in conscience to condemn himself when questioned by a judge. Hence in a criminal case he need not take the oath, nor is he obliged to answer any questions regarding the crime. He may not use guile, fraud or falsehood, but may use all lawful means to conceal or escape the condemnation of his crime. This would seem to apply also to a subject and his religious superior. Hence such an avowal could not be imposed by a Superior unless particular rules or constitutions make this binding under pain of sin.

- 1869** RDC II/61, 3-31: J. Delanglade, S.J.: Le Juge, Serviteur de la Loi ou Gardien de la Justice selon la Tradition Théologique. (Article.)

Continuation of an earlier article (Cf. CLA 5, 64). D. considers the arguments commonly used by both sides, legalist and anti-legalist, from Scripture, the Fathers and reason, and rejects the Thomist legalist view that the judge is a protector of the formal law, and makes him above all the defender of justice: normally these two correspond. He draws no practical conclusions.

- 1880, 6°** IDE II/61, part 1, 69-92: A. Talamanca: Ambito e limiti di appellabilità della sentenza interlocutoria nel diritto processuale canonico. (Article.)

Cn 1880, 6° forbids in general appeal against the interlocutory sentence of a judge and admits of one exception, *i.e.*, when the interlocutory sentence is definitive. T. clearly defines the terms and the variations of their meaning in Roman and German law; traces the history from the Decretals of Gregory IX through the Council of Trent to the Code and states the existing legislation on a definitive interlocutory sentence.

1891 § 1 IDE I/61, part 1, 3-15: M. Petroncelli: Osservazioni in tema di competenza dei tribunali ecclesiastici di appello a concordare un nuovo capo di nullità matrimoniale. (Article.)

A discussion of the legal force of art. 219 § 2 of the *Provida Mater*. P. agrees with the conclusions of Salerno (IDE, II/59, p. 237) except when he states that art. 219 § 2 is not a prorogation of relative competence "*ex jure communi*," but a prorogation of competence "*ex jure speciali*."

1892 Per I/61, 3-30: O. Robleda: Criteria nullitatis sententiae
1894 judicialis. (Article.)

Restitutio in integrum cannot be sought as a remedy in cases of invalid sentence, or where processual law has been violated yet leaving the subsequent sentence valid, unless injustice to a party results. Neither can querela nullitatis be invoked when certain acts of the process are invalid but the sentence valid, nor in cases where there is invalidity that does not arise from the defects listed in cns 1892 and 1894. Nevertheless, a party may justly seek a remedy at law: is there, then, a lacuna legis here? R. shows that the common law provides remedies (e.g., cn 1679), but clarification is necessary in a future revision of the Code.

1963 ZSS 1960, 434-442: K. A. Fink: Frühe urkundliche Belege für die Auflösung des matrimonium ratum non consummatum durch päpstliche Dispensation. (Article.)

The canonist usually traces the first examples of dispensations super rato to the pontificates of Martin V and Eugenius IV. Practically the sole witness to this is St Antoninus (Summa, III, xxi): "Vidi aliquas bullas et Martini V et Eugenii IV continentes talem dispensationem . . .," and his evidence has been impugned by several authors. F. reproduces seven texts from the pontificate of Martin V, pertaining to three cases: I. The petition shows that the woman had assured the man that she was a virgin, whereas she was in fact pregnant to another man; the rescript suggests that the parties enter religion, but if not, they may remarry provided both agree. II. The petition shows a similar state of affairs, and the rescript makes no mention of entering religion. In this case a further petition was made two years later for declaration of nullity on the grounds of error. III. Only two petitions are given for this, (two because the bishop died in the meantime), and they show that the twelve-year old girl was under pressure from her mother.

1990 J I/61, 75-93: J. P. King: Jurisdiction in Administrative Matrimonial Cases. (Article.)

K. deals with the procedure to be followed in handling the usual administrative matrimonial cases which involve the exercise of jurisdiction in one way or another: declarations of free state because of lack of canonical form and presumed death; jurisdiction for the administrative settlement of separation cases; the authority required to supervise the operation of the Pauline Privilege; and, because of their administrative nature, petitions to the Holy See for the dissolution of non-consummated marriages and of the natural bond of marriage. The discussion is limited entirely to the administrative handling of these cases and is not concerned with the formal procedure.

1990-2 J II/61, 236-262: A. J. Bevilacqua: Competence of the Ordinary in the documentary process of Canons 1990-1992. (Article.)

In spite of its great importance and frequent use, the summary judicial process of cns 1990-1992 is rather inadequately treated in most manuals of procedure. In an attempt to make up for this neglect B. devotes this article to the much disputed and confused question of competence in cn 1990 cases, and reaches the following general conclusions: (1) The Ordinary may carry out the 1990 process even though neither party to the marriage has requested it and even against the wishes of both spouses; (2) A non-Catholic party may request an annulment and, in such a case, the Ordinary may carry out the 1990 process without previous recourse to the S.C.S.O. for permission; (3) The Ordinary competent to carry out the 1990 process is any Ordinary; (4) Cn 1964 with its rules of competence for formal trials does not apply to the 1990 process as an obligatory norm; (5) The Promoter of Justice is never required in the 1990 process.

2136 ME II/61, 258-280: A. Crnica: De Canonizatione Aequipollenti. (Article.)

C. deals with the history of equivalent canonisation before the Code and after its publication. He gives lists of saints thus canonised. He quotes Pius VI's equivalent canonisation of Albert the Great, of St. Thomas More and St. John Fisher (though he holds that these were formally canonised in spite of the absence of miracles), the equivalent canonisation of St. Margaret, daughter of Bela IV, King of Hungary, by Pius XII on Nov. 19, 1943. C. carefully explains the notion of equivalent canonisation.

LIBER V: DE DELICTIS ET POENIS

2248 § 2 HPR 1/61, 392-399: C. L. Parres, C.M.: Absolution from Censure before Declaration of Nullity of Attempted Marriage. (Reply.)

1. In the case of a Catholic who has contracted an invalid marriage and thereby incurred excommunication, there is no need to delay the absolution from this censure until an official decision on the nullity of the marriage has been given. All that is necessary is that the usual conditions for absolution be fulfilled.

2. An absolution from censure of this kind in the external forum need not be before two witnesses.

2257 AdC 13/61, 198-201: A. Bride: Mariage d'un catholique au temple. (Reply.)

Cf. cn 2319 § 1, below.

2257 ZSS 1960, 135-220: P. Hofmeister: Die Excommunicatio regularis. (Article.)

Cf. above, General and Historical Subjects, p. 5.

2293 OAK II/61, 87-113: G. May: Die Bedeutung der pseudo-isidorischen Sammlung für die Infamie im kanonischen Recht. (Article.)

Cf. above, General and Historical Subjects, p. 7.

2319 AdC 24/61, 373-377: A. Bride: Situation canonique des acatholiques baptisés dans l'Eglise romaine. (Reply.)

Cf. cn 1099, above.

2319 § 1 AdC 13/61, 198-201: A. Bride: Mariage d'un catholique au temple. (Reply.)

B. considers that a Catholic who marries a Protestant in a Protestant church incurs the excommunication unless excused by some lessening of imputability by ignorance. Grave fear would scarcely excuse him because scandal and contempt of the Faith would probably be present. He would not necessarily be an apostate. B. then deals with the effects of excommunication and foresees no great change in the present benign state of the law.

- 2342 VR I/61, 45-47: A. Peinador, C.M.F.: Acerca de la Clausura. (Reply.)**

Cf. cn 601, above.

- 2366 HPR 5/61, 799-800: C. L. Parres, C.M.: Temporary Faculties Probably Expired. (Reply.)**

A visiting priest with temporary faculties to hear confession suddenly (and erroneously) thinks during a confession that his faculties have probably expired. He proceeds with the confession. Is he suspended a divinis in virtue of cn 2366? Briefly the answer is no, because there was no objective violation of a penal law. Even if his faculties had expired cn 209 would come to his rescue, as his doubt was probable. And indeed even if he knew for certain that his faculties had expired and deliberately created a situation of common error he would not incur the penalty, though he could be guilty of sin.

- 2376ff PdC 6/61, 339-341: U. da Arienzo, O.F.M.Cap.: Spettacoli pubblici e sospensione. (Reply.)**

Cf. cn 140, above.

- 2414 ITQ I/61, 29-44: E. McCaffrey, O.D.C.: Confessors of nuns and sisters. (Article.)**

This cn imposes a precept on the local Ordinary. A regular superior should not act in this matter even if the convent is subject to him: he should report the fault to the bishop.